

THOMAS J BURKE, JR
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JONES & KELLER
A PROFESSIONAL CORPORATION

tyburke@joneskeller.com

June 18, 2008

FEDERAL EXPRESS

222640



Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

Re Transportation Management Systems, LLC and East West Resort Transportation, LLC—
Transfer & Control— Delivery Acquisition, Inc., Docket No MC-E-35158

MC-E-21028

Dear Secretary

Enclosed for filing under the provisions of 49 U.S.C. § 14303(2) and (5) are the following:

(1) An original and ten additional copies of an application whereby Delivery Acquisition, Inc. seeks the Board's authority for acquisition of the motor carrier assets of Transportation Management Systems, LLC, f/k/a TMS, Inc. and East West Resort Transportation, Inc., and for Vail Resorts, Inc. to control more than one carrier through the transaction.

(2) An Appendix of Documents containing exhibits referenced in the application itself.

(3) Check number 112442 of Dufford & Brown, P.C. for \$1,700 in payment of the required filing fee,

(4) Three CD-ROMs which contain in digital format the documents referenced in paragraph (1).

If I can explain anything concerning this application, or can be of assistance to your office in any other way, please contact me

FILED

JUN 19 2008

TJB\brh **SURFACE
TRANSPORTATION BOARD**

Enclosures

cc Jay Ufer
Scott B. Pullara, Esq.
Mark A. Davidson, Esq.

Very truly yours,

Thomas J. Burke, Jr.

ENTERED
Office of Proceedings

JUN 19 2008

Part of
Public Record

FEE RECEIVED

JUN 19 2008

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE SURFACE TRANSPORTATION BOARD
STB Docket No. ~~MC-F-35158~~

*** *MC-F-21028*



VERIFIED JOINT APPLICATION OF DELIVERY ACQUISITION, INC. FOR
AUTHORITY TO ACQUIRE THE PROPERTIES OF EAST WEST RESORT
TRANSPORTATION, LLC AND TRANSPORTATION MANAGEMENT SYSTEMS,
LLC. f/k/a TMS, LLC THROUGH PURCHASE, AND FOR AUTHORITY OF VAIL
RESORTS, INC., AS A PERSON IN CONTROL OF A CARRIER, TO ACQUIRE
CONTROL OF THE ASSETS OF EAST WEST RESORT TRANSPORTATION, LLC
AND TRANSPORTATION MANAGEMENT SYSTEMS, LLC THROUGH THE
TRANSACTION

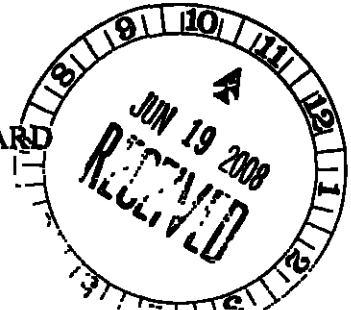


Mark A. Davidson
Dufford & Brown P.C.
1700 Broadway, Suite 2100
Denver, CO 80290-2101
ATTORNEYS FOR
DELIVERY ACQUISITION, INC and
VAIL RESORTS, INC.

and

Thomas J. Burke, Jr.
Jones & Keller, P.C.
1625 Broadway, Suite 1600
Denver, CO 80202-4727
ATTORNEYS FOR
TRANSPORTATION MANAGEMENT
SYSTEMS, LLC AND EAST WEST RESORT
TRANSPORTATION, LLC

BEFORE THE SURFACE TRANSPORTATION BOARD
STB Docket No. MC-F-35158



VERIFIED JOINT APPLICATION OF DELIVERY ACQUISITION, INC. FOR AUTHORITY TO ACQUIRE THE PROPERTIES OF EAST WEST RESORT TRANSPORTATION, LLC AND TRANSPORTATION MANAGEMENT SYSTEMS, LLC, f/k/a TMS, LLC THROUGH PURCHASE, AND FOR AUTHORITY OF VAIL RESORTS, INC., AS A PERSON IN CONTROL OF A CARRIER, TO ACQUIRE CONTROL OF THE ASSETS OF EAST WEST RESORT TRANSPORTATION, LLC AND TRANSPORTATION MANAGEMENT SYSTEMS, LLC THROUGH THE TRANSACTION.

Pursuant to the requirements of 49 U.S.C. § 14303(a)(4) and (5), and this Board's pertinent regulations in 49 C.F.R. § 1182, *et seq.*, Delivery Acquisition, Inc. ("Delivery") seeks (1) the Board's authorization to acquire control, through purchase, of the properties of Transportation Management Systems, LLC, f/k/a TMS, Inc.¹ ("TMS") and East West Resort Transportation, LLC ("EWRT"); and for authorization by Vail Resorts, Inc., as a person in control of a carrier, i.e., Grand Teton Lodge Company, to acquire control of the assets of EWRT and TMS through the transaction

1 Identification of the Parties

- (a) Delivery Acquisition, Inc.
390 Interlocken Crescent
Broomfield, CO 80021

Delivery is a corporation organized and existing under the laws of the State of Colorado.

Delivery proposes to control, through purchase, the certificates of public convenience and necessity set forth in paragraph 2(b) below.

- (b) Vail Resorts, Inc.
390 Interlocken Crescent
Broomfield, CO 80021

Vail Resorts, Inc. ("VRI") is a corporation organized and existing under the laws of the State of Delaware. VRI, as pertinent to the present application, is a person in control of a carrier, Grand Teton Lodge

¹ Pursuant to 49 C.F.R. 365.413, *et seq.*, a notice of name change has been furnished contemporaneously to the Federal Motor Carrier Safety Administration reflecting that the present correct name of the entity referred to as TMS, LLC in the Board's decision in Docket No. MC-F-20996 served January 10, 2003 is Transportation Management Systems, LLC

Company, and seeks the Board's authorization to control EWRT and TMS, through the transaction

(c) East West Resort Transportation, LLC

Mailing Address:

P O. Box 580

Vail, Colorado 81658

Physical Address:

434 Edwards Access Road

Edwards, Colorado 81632

EWRT is a limited liability company organized and existing under the laws of the State of Delaware. EWRT is the lessee of the certificates of public convenience and necessity set forth in paragraph 2(b) below.

(d) Transportation Management Systems, LLC

Mailing Address:

P.O. Box 580

Vail, Colorado 81658

Physical Address:

434 Edwards Access Road

Edwards, Colorado 81632

TMS is a limited liability company organized and existing under the laws of the State of Delaware. It is the lessor of the certificates of public convenience and necessity described in paragraph 2(b) below.

TMS does business under the following trade names. Colorado Mountain Express and/or CME Premier and/or Premier VIP Transportation, and/or Resort Express.

2. The Pertinent Operating Rights

(a) Both Carriers Registered.

Both EWRT and TMS are carriers registered with the Secretary of Transportation

(b) Pertinent Interstate Operating Rights.

TMS and EWRT are lessor and lessee, respectively, of the operating rights issued by the former Interstate Commerce Commission in MC-169714 and MC-174332, providing for special and charter operations in interstate and foreign commerce, and in MC-181367 providing for interstate and intrastate regular route operations.

(c) Pertinent Colorado Intrastate Operating Authority.

TMS and EWRT are also lessor and lessee, respectively, of an operating right issued by the Public Utilities Commission of the State of Colorado. EWRT and TMS specifically request that they be authorized to transfer all their right, title and interest in such intrastate operating authority without the necessity of approval by the Public Utilities Commission of the State of Colorado, as provided in 49 U S C. 14303(f).

(d) Copies Attached.

Copies of the operating authorities referred to in paragraphs 2(b) and 2(c) are attached hereto as Exhibit 1 in the accompanying Appendix of Documents, properly noted in the Table of Contents and tabbed accordingly.

3 Description of the Proposed Transaction.

By the present transaction, EWRT and TMS propose to sell all their assets, including their interests in the operating rights set forth in 2(b) and (c), to Delivery, for a purchase price of \$41.5 million, subject to certain adjustments, the net amount of which, after such adjustments, is to be paid at the closing by an escrow agent's wire transfer of immediately available funds. A copy of the parties' Asset Purchase Agreement, absent the parties' various disclosures to one another, but containing all exhibits covering the entire transaction is included as Exhibit 2 in the accompanying Appendix of Documents.

4. Affiliation With Other Carriers.

Apart from the present affiliation of EWRT and TMS, as described, VRI is additionally in control of Grand Teton Lodge Company, a carrier registered with the Secretary of Transportation, which holds operating rights issued to it in Docket No. MC-6259. VRI seeks authorization under 49 U.S.C. § 14303(5), as a person in control of a carrier, to control EWRT and TMS through the transaction. Following such approval, Delivery and Grand Teton Lodge Company will necessarily become affiliated carriers, although none of these carriers will be in control of the others.

5. Statement of Jurisdiction under 49 U.S.C. § 14303(g)

The 12-month aggregate gross operating revenues of all motor carrier parties and all motor carriers controlling, controlled by, or under common control with any party from all transportation sources (whether interstate, intrastate, foreign, regulated or unregulated), exceeded \$2 million for a 12-month period ending not more than 6 months before the date of the parties' agreement covering the transaction.

6. Quality of the Human Environment

The proposed transaction, if implemented, will not significantly affect the quality of the human environment and the conservation of energy resources. The present operation, by the parties' agreement, will simply transfer to new and capable hands, the existing motor carrier operations already being performed under the collective ownership and operation by EWRT and TMS.

7 Consistency With the Public Interest.

The efficiencies which will inhere in the proposed operation under Delivery's ownership will be plainly consistent with the public interest. As a newly-formed indirect subsidiary² of Vail Resorts, Inc., Colorado's largest provider of multi-county all year resort services, including lodging, ski lift tickets, and other amenities, Delivery will be able to offer a seamless transition from, typically, a Colorado airport origin, such as Denver International Airport, or the Eagle, Colorado airport to multiple Colorado mountain destinations utilizing its on line and similarly seamless computer reservation systems operated by expert travel and resort specialists. To that end, Delivery believes it will achieve operating efficiencies in providing passenger transportation service not only to and from its own resort properties, but also for the many other year round resorts located in the Colorado Rockies. The result is anticipated to be more efficient and convenient service provided by a well-financed and competent operator, ultimately to the benefit of the public making use of Delivery's service. The following additional factors considered by the Board to evidence consistency with the public interest are set forth below in (a) through (c).

(a) Effect of Transaction on Service to the Public.

The riding public will experience no deterioration in service as the result of implementation of the transaction. Delivery is an indirect subsidiary of Vail Resorts, Inc., a publicly held company listed on the New York Stock Exchange, which operates leading year round Colorado mountain resorts in Summit and Eagle Counties, Colorado. Delivery's access to capital in the form of advances from its parent are more than adequate for performance of the service occasioned by the granting of this application. Under the circumstances related above,

² Delivery is a direct subsidiary of The Vail Corporation, which is, in turn, a direct subsidiary of Vail Holdings, Inc. Vail Holdings, Inc. is in turn a direct subsidiary of Vail Resorts, Inc. Grand Teton Lodge Company is also a subsidiary of The Vail Corporation.

Delivery believes its service will as a result of the granting of this application result in enhanced service to the public by reason of its access to capital and also by its national advertising and marketing, as well as from the ability to call on and to utilize the Sellers' experience and that of its substantially retained employees in the future as in the past.

(b) Fixed Charges Resulting From The Transaction.

Delivery proposes to pay the purchase price for the identified assets in the form of cash. No fixed charges will result from implementation of the transaction.

(c) Interest of Carrier Employees Affected By The Transaction.

Delivery will employ all or substantially all of EWRT's and TMS's employees if the present transaction is approved.

8. Safety Rating.

EWRT, under its trade name Colorado Mountain Express, holds a satisfactory safety rating from the United States Department of Transportation. TMS, which is a non-operating entity, holds no safety rating.

As a newly formed entity, Delivery has no safety rating. Delivery will be managed by the same senior management team that oversees the operations of Grand Teton Lodge Company, however, which is also an indirect subsidiary of Vail Resorts, Inc. Grand Teton Lodge Company holds a satisfactory safety rating from the United States Department of Transportation.

9 Insurance Coverages.

Delivery certifies that it has, or will have at the closing of the proposed transaction, sufficient insurance coverage under 49 U.S.C. 139006(a) and (d) for the service it intends to provide.

10. No Mexico Domicile, Ownership or Control.

No party acquiring operating rights through the proposed transaction is domiciled in Mexico or owned or controlled by persons of that country.

11. No Individual Ownership; Entire Case Submitted; Verifications to Follow.

(a) Ownership.

No individual will hold any operating authority resulting from the proposed transaction in his or her own name.

(b) Entire Case: Applicants Will Supplement on Request

The present application contains applicants' entire case in this proceeding and is believed to be adequate in content to permit the Board to rule affirmatively on it. If, however, the Board determines it wishes to have the applicants add to or otherwise to supplement its application with other and additional information concerning the transaction, the applicants will promptly provide it.

(c) Verifications.

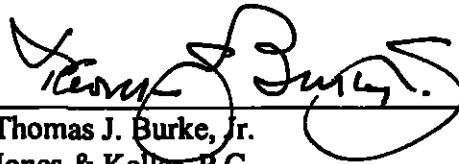
Each applicant will certify at the end of this application as to the accuracy and completeness of all factual material submitted, as required by 49 C.F.R. § 1182.8(c).

Delivery Acquisition, Inc., Vail Resorts, Inc., East West Resort Transportation, LLC and Transportation Management Systems, LLC each request that The Surface Transportation Board grant the present application and thereby authorize the transaction under 49 U.S.C. § 14303(a)(4) and (5).

Dated: June 18, 2008



Mark A. Davidson
Dufford & Brown P.C.
1700 Broadway, Suite 2100
Denver, CO 80290-2101
ATTORNEYS FOR
DELIVERY ACQUISITION, INC. and
VAIL RESORTS, INC.



Thomas J. Burke, Jr.
Jones & Keller, P.C.
1625 Broadway, Suite 1600
Denver, CO 80202-4727
ATTORNEYS FOR
TRANSPORTATION MANAGEMENT
SYSTEMS, LLC AND EAST WEST RESORT
TRANSPORTATION, LLC

VERIFICATION


STATE OF COLORADO)
) ss:
COUNTY OF)

I, Jeffrey W. Jones, as Senior Executive Vice President and Chief Financial Officer of Delivery Acquisition, Inc., verify under penalty of perjury, under the laws of the United States of America, that all information supplied in connection with this application is true and correct. Further, I certify that I am qualified and authorized to file this application or pleading. I know that willful misstatements or omissions of material facts constitute federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment of up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment of up to five years for each offense.

DELIVERY ACQUISITION, INC.



Jeffrey W. Jones
SEVP and Chief Financial Officer

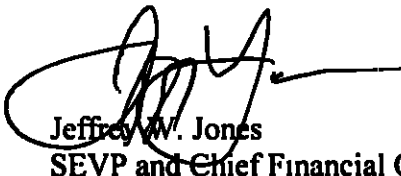
Approved as to Form:
Vail Resorts Legal Department
By: 
Name: MIKE KETSAN
Date: 6.16.08

VERIFICATION


STATE OF COLORADO)
) ss:
COUNTY OF)

I, Jeffrey W. Jones, as Senior Executive Vice President and Chief Financial Officer of Vail Resorts, Inc., verify under penalty of perjury, under the laws of the United States of America, that all information supplied in connection with this application is true and correct. Further, I certify that I am qualified and authorized to file this application or pleading. I know that willful misstatements or omissions of material facts constitute federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment of up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment of up to five years for each offense.

VAIL RESORTS, INC




Jeffrey W. Jones
SEVP and Chief Financial Officer

Approved as to Form
Vail Resorts Legal Dept to cert
By: 
Name: MIKE KELVAN
Date: 6-16-08

VERIFICATION

I, Jay R. Ufer, as President of Transportation Management Systems, LLC, verify under penalty of perjury, under the laws of the United States of America, that all information supplied in connection with this application is true and correct. Further, I certify that I am qualified and authorized to file this application or pleading. I know that willful misstatements or omissions of material facts constitute federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment of up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment of up to five years for each offense.

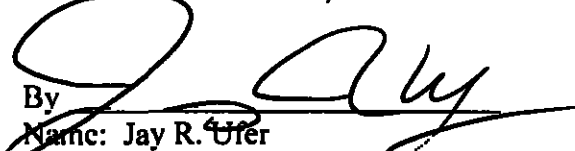
TRANSPORTATION MANAGEMENT SYSTEMS, LLC

By: 
Name: Jay R. Ufer
Title: President

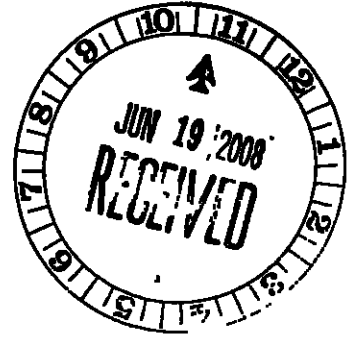
VERIFICATION

I, Jay R. Ufer, as President of East West Resort Transportation, LLC, verify under penalty of perjury, under the laws of the United States of America, that all information supplied in connection with this application is true and correct. Further, I certify that I am qualified and authorized to file this application or pleading. I know that willful misstatements or omissions of material facts constitute federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment of up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment of up to five years for each offense.

EAST WEST RESORT TRANSPORTATION, LLC

By: 
Name: Jay R. Ufer
Title: President

APPENDIX OF DOCUMENTS



Exhibit

Description

Exhibit 1

Operating Authorities

Exhibit 2

Asset Purchase Agreement

TAB 1

-4
5/33:

**INTERSTATE COMMERCE COMMISSION
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

MC 169174 (a)

COLORADO MOUNTAIN EXPRESS, INC.
DENVER, COLORADO

SERVICE DATE
NOV 17 1953

This Certificate of Public Convenience and Necessity is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicle.

This authority will become effective only when the carrier has met the compliance requirements pertaining to insurance coverage for the protection of the public (49 CFR 1343), the designation of agents upon whom process may be served (49 CFR 1344), and tariffs or schedules (49 CFR 1300 through 1310, revised). The carrier shall also render reasonably continuous and adequate service to the public. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

For common carriers with irregular route authority: Any irregular route authority authorized in this certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

The transportation service to be performed is described on the reverse side of this document and will be valid as long as the carrier maintains compliance with the above requirements.

By the Commission.

(SEAL)

Agatha L. Mergencovich
Secretary

Note: If there are any discrepancies regarding this document please notify the Commission within 30 days.

MC 149174 (a)
SHEET NO. 2

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting passengers, between Denver, CO and Grand Junction, CO, (a) over Interstate Hwy 70 and (b) over U.S. Hwy 6, and return over the same routes, serving all intermediate points.

NOTE: Carrier is authorized to provide regular-route service in interstate or foreign commerce and in interstate commerce under 49 U.S.C. 10922(c)(2)(3).

INTERSTATE COMMERCE COMMISSION

CERTIFICATE

No. MC 169174 Sub 7

COLORADO MOUNTAIN EXPRESS, INC.
VAIL, CO

SERVICE DATE

MAR 11 1993

This Certificate is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicle.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043); the designation of agents upon whom process may be served (49 CFR 1044); and tariffs or schedules (49 CFR 1312). The carrier shall also render reasonably continuous and adequate service to the public. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

For common carriers with irregular route authority: Any irregular route authority authorized in this Certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

The transportation service to be performed is described on the reverse side of this document.

By the Commission.

SIDNEY L. STRICKLAND, JR.
Secretary

(SEAL)

NOTE: If there are any discrepancies regarding this document, please notify the Commission within 30 days.

NOTE: The carrier is authorized to provide regular-route transportation in intrastate commerce and also must comply with requirements at 49 USC 10922(c)(2)(E).

CONDITION: The carrier is authorized to provide intrastate transportation service on a route under this certificate only if the carrier provides regularly scheduled interstate transportation service on the route.

To operate as a common carrier, by motor vehicle, in interstate, intrastate or foreign commerce, over regular routes, transporting passengers, between jct. U.S. Hwy 6, Interstate Hwy 70 and CO Hwy 82, and Aspen, CO, over CO Hwy 82, serving all intermediate points.

NOTE: Applicant intend to tack this authority with existing Regular-route authority.

"This Certificate cancels Certificate No. MC 169174 Sub 7 issued February 16, 1993, as corrected.

NOTE: Willful and persistent noncompliance with applicable safety fitness regulations as evidenced by a DOT safety fitness rating of "Unsatisfactory" or by other indicators, could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.

CORRECTED
INTERSTATE COMMERCE COMMISSION

CERTIFICATE

SERVICE DATE

No. MC-174332 Sub 1*

JUN 29 1987

ASPEN LIMOUSINE SERVICE, INC.
DBA VANS TO VAIL
Aspen, CO

This Certificate is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicle.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043); the designation of agents upon whom process may be served (49 CFR 1044); and tariffs or schedules (49 CFR 1300 through 1310, revised). The carrier shall also render reasonably continuous and adequate service to the public. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

For common carriers with irregular route authority: Any irregular route authority authorized in this certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

The transportation service to be performed is described on the reverse side of this document.

By the Commission.

(SEAL)

Notata R. McGee
Secretary

NOTE: The carrier in (a) is authorized to provide regular-route transportation in interstate commerce and also must comply with requirements at 49 USC 10922(c)(2)(E).

CONDITION: The carrier is authorized to provide interstate transportation service on a route under this certificate only if the carrier provides regularly scheduled interstate transportation service on the route.

NOTE: If there are any discrepancies regarding this document, please notify the Commission within 30 days.

No. MC-174332 Sub 1*

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, and in intrastate commerce, over regular routes, transporting (a) passengers (1) between Denver, CO, and Beaver Creek, Co: from Denver over Interstate Hwy 70 to Avon, then over unnumbered highways to Beaver Creek, and return over the same route, and (2) between junction Interstate Hwy 70 and U.S. Hwy 6 and junction U.S. Hwy 6 and Interstate Hwy 70, over U.S. Hwy 6, serving all intermediate points in routes (1) and (2) above, and (b) over irregular routes, transporting passengers, in charter and special operations, between points in CO.

*
This certificate cancels and corrects Certificate No. MC-174332 Sub 1, issued June 2, 1987.

PH-26
(Rev. 10/84)

CORRECTED
INTERSTATE COMMERCE COMMISSION
CERTIFICATE

SERVICE DATE

JAN 10 1990

No. MC-174332 Sub 3*

**ASPEN LIMOUSINE SERVICE, INC.,
DBA VANS TO VAIL
Glenwood Springs, CO**

This Certificate is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicle.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043); the designation of agents upon whom process may be served (49 CFR 1044); and tariffs or schedules (49 CFR 1312). The carrier shall also render reasonably continuous and adequate service to the public. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

For common carriers with irregular route authority: Any irregular route authority authorized in this Certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

The transportation service to be performed is described on the reverse side of this document.

By the Commission.

(SEAL)

**NORETA R. MCGEE,
Secretary.**

NOTE: If there are any discrepancies regarding this document, please notify the Commission within 30 days.

NOTE: The carrier is authorized to provide regular-route transportation in intrastate commerce and also must comply with requirements at 49 USC 10922(c)(2)(B).

CONDITION: The carrier is authorized to provide intrastate transportation service on a route under this certificate only if the carrier provides regularly scheduled interstate transportation service on the route.

No. MC-174332 Sub 3*

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, and in intrastate commerce, over regular routes, transporting passengers, between Beaver Creek, CO, and Aspen, CO: from Beaver Creek over unnumbered hwy to Interstate 70 and U.S. Hwy 6 to Glenwood Springs, CO, then over CO hwy 82 to Aspen, and return over the same route, serving all intermediate points.

*This certificate cancels and corrects Certificate No. MC-174332 Sub 3, issued January 2, 1990.

INTERSTATE COMMERCE COMMISSION

SERVICE DATE

CERTIFICATE

JAN, 5 1992

No. MC-174332 Sub 5*

ASPEN LIMOUSINE SERVICE, INC., DBA VANS TO VAIL, INC.
Glenwood Springs, CO

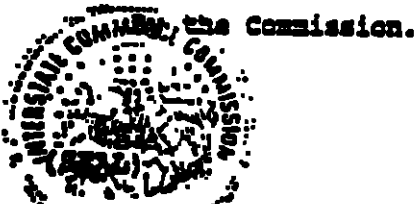
This Certificate is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicles.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 8143); the designation of agents upon whom process may be served (49 CFR 1044); and tariffs or schedules (49 CFR 1312). The carrier shall also render reasonably continuous and adequate service to the public. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

~~For carriers with irregular route authority:~~ Any irregular route authority authorized in this Certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

The transportation service to be performed is described on the reverse side of this document.



Sidney L. Strickland, Jr.
Sidney L. Strickland, Jr.
Secretary

NOTE: If there are any discrepancies regarding this document, please notify the Commission within 30 days.

NOTE: The carrier is authorized to provide regular-route transportation in intrastate commerce and also must comply with requirements at 49 USC 10922(c)(2)(E).

CONDITION: The carrier is authorized to provide intrastate transportation service on a route under this certificate only if the carrier provides regularly scheduled interstate transportation service on the route.

No. MC-174332 Sub 5*

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, and in intrastate commerce, over regular routes transporting passengers (1) between Denver, CO, and Rifle, CO: from Denver over Interstate Hwy 70 to junction CO Hwy 13, then over CO Hwy 13 to Rifle, and return over the same route; (2) between Denver, CO, and Rifle, CO, over U.S. Hwy 6; (3) between Glenwood Springs, CO, and Aspen, CO, over CO Hwy 82; and (4) between Frisco, CO, and the Park/Summit County line, over CO Hwy 9; serving all intermediate points in (1) through (4) above.

*This certificate cancels No MC-174332 Sub 5, issued August 20, 1991, and is reissued to remove the term limitation.

NOTE: Willful and persistent noncompliance with applicable safety fitness regulations as evidenced by a DOT safety fitness rating of "Unsatisfactory" or by other indicators, could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.

FM-26
(Rev. 10/84)

INTERSTATE COMMERCE COMMISSION

SERVICE DATE

CERTIFICATE

DEC 29 1995

No. MC-181367*

RESORT EXPRESS, INC.
SILVERTHORNE, CO

This Certificate is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicle.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043); the designation of agents upon whom process may be served (49 CFR 1044); and tariffs or schedules (49 CFR 1312). The carrier shall also render reasonably continuous and adequate service to the public. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

For common carriers with irregular route authority: Any irregular route authority authorized in this Certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

The transportation service to be performed is described on the reverse side of this document.

By the Commission.

Vernon A. Williams
Secretary

(SEAL)

NOTE: If there are any discrepancies regarding this document, please notify the Commission within 30 days.

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, and in intrastate commerce, over regular routes, transporting passengers: (1) between Denver International Airport at or near Denver, CO, and Breckenridge, CO: from Denver International Airport over access roads to junction Interstate Hwy 70, then over Interstate Hwy 70 to junction Colorado Hwy 9, then over Colorado Hwy 9 to Breckenridge, and return over the same route; (2) between Denver International Airport at or near Denver, CO, and Keystone Ski Resort, CO: from Denver International Airport over access roads to junction Interstate Hwy 70, then over Interstate Hwy 70 to junction U.S. Hwy 6, then over U.S. Hwy 6 to Keystone Ski Resort, and return over the same route; and (3) between Denver International Airport at or near Denver, CO, and Copper Mountain Ski Resort, CO: from Denver International Airport over access roads to junction Interstate Hwy 70, then over Interstate Hwy 70 to Copper Mountain Ski Resort, and return over the same route; serving all intermediate points in (1) through (3) above.

*This certificate cancels Certificate No. MC-181367, issued October 4, 1985 and is reissued to show applicant's correct authority.

NOTE: Willful and persistent noncompliance with applicable safety fitness regulations as evidenced by a DOT safety fitness rating of "Unsatisfactory" or by other indicators, could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.

INTERSTATE COMMERCE COMMISSION

SERVICE DATE

DEC 7 1987

CERTIFICATE

MC-181367 Sub 2 *
RESORT EXPRESS, INC.
(Silverthorne, CO)

This Certificate is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicle.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043); the designation of agents upon whom process may be served (49 CFR 1044); and tariffs or schedules (49 CFR 1300 through 1310, revised). The carrier shall also render reasonably continuous and adequate service to the public. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

For common carriers with irregular route authority: Any irregular route authority authorized in this Certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

The transportation service to be performed is described on the reverse side of this document.

By the Commission.

Noreta R. McGee
Secretary

(SEAL)

NOTE: If there are any discrepancies regarding this document, please notify the Commission within 30 days.

*NOTE: The carrier is authorized to provide regular-route transportation in intrastate commerce and also must comply with requirements of 49 U.S.C. 10922(c)(2)(E).

*CONDITION: The carrier is authorized to provide intrastate transportation service on a route under this certificate only if the carrier provides regularly scheduled interstate transportation service on the route.

MC-181367 Sub 2 *
Page 2

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, and in intrastate commerce, over regular routes, transporting passengers, between Copper Mountain Ski Resort Area, CO, and Avon, CO, over Interstate Highway 70, serving all intermediate points.

*CONDITION: The carrier is authorized to provide intrastate transportation service on a route under this certificate only if the carrier provides regularly scheduled interstate transportation service on the route.

STATE OF COLORADO

PUBLIC UTILITIES COMMISSION

Raymond L. Gifford, Chairman
Vincent Majkowski, Commissioner
Robert J. Hix, Commissioner
Bruce N. Smith, Director

Department of Regulatory Agencies

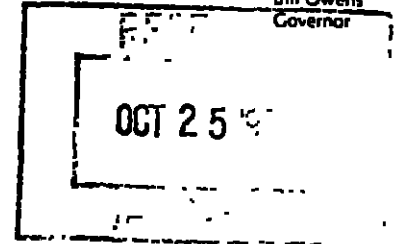
M. Michael Cooke
Executive Director



Bill Owens
Governor

October 22, 1999

Colorado Mountain Express, a Delaware LLC.
P.O. Box 580
Vail, CO 81658



Docket No. 98M-551CP-Merger; Decision No. C99-821

This is to advise that you are now in compliance with all pertinent requirements of the Commission's Rules and Regulations and the decision is now final.

You have been assigned Certificate Number 7321. This number must be used as the means of proper identification for the authority granted to you by this Commission. Mark your vehicles according to the enclosed instructions.

A copy of your authority sheet must be placed in each vehicle used in the conduct of operations under the authority granted. You may copy the enclosed authority sheet in order to comply with this requirement.

Your attention is directed to the copy of the Rules and Regulations that are enclosed. Read these Rules and Regulations carefully.

Please refer to your authority number on any correspondence you may direct to this Commission so that we may serve you in a prompt and efficient manner.

Marsha Nemo,
Office Manager

MN:mn

CC: Jennifer L. Arthur, Attorney for Applicant

1580 Logan Street, Office Level 2, Denver, Colorado 80203, 303-894-2000

www.dora.state.co.us/puc
Permit and Insurance (Outside Denver) 1-800-888-0170
TTY Users 1-800-659-2656 (Relay Colorado)
Consumer Affairs 303-894-2070

Consumer Affairs (Outside Denver) 1-800-456-0858
Hearing Information 303-894-2025
Transportation Fax 303-894-2071
Fax 303-894-2065

LETTER OF AUTHORITY

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Department of Regulatory Agencies

THE PUBLIC UTILITIES COMMISSION

OFFICE LEVEL TWO 1580 LOGAN STREET
DENVER, COLORADO 80203

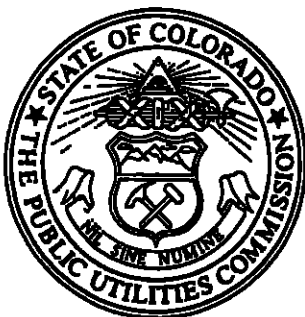
ISSUED TO:

Certificate Number: 7321

Colorado Mountain Express, a Delaware LLC.
P.O. Box 580
Vail, CO 81658

- I Transportation of passengers and their baggage in scheduled service:
- A between Denver Union Station and points within a two-mile radius thereof, on the one hand, and all points located within the County of Eagle, State of Colorado, on the other hand;
 - B between Denver, Colorado, and Rifle, Colorado via I-70 and U S Highway No 6 serving all intermediate points; and in addition serving all off-route points within one mile of said routes located west of a line drawn north and south through Empire, Colorado; and serving the off-route point of Beaver Creek, Colorado;
 - C. between Glenwood Springs, Colorado, and Aspen, Colorado via Colorado State Highway No. 82 and Brush Creek Road serving all intermediate points, all off-route points located within one mile of said route and serving the off-route points of Snowmass Village and Snowmass Ski Resort,
 - D. between Frisco, Colorado, and Blue River, Colorado via Colorado State Highway No. 9 serving all intermediate points and all off-route points located within one mile of said route and serving the off-route point of Keystone, Colorado;
 - E. between Grand Junction, Colorado (including Grand Junction Municipal Airport, Walker Field), on the one hand, and ski areas located in Colorado west of the Continental Divide, on the other hand.

(S E A L)



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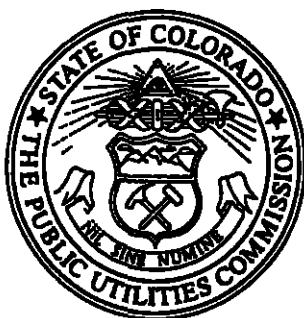
1580 LOGAN STREET

DENVER, COLORADO 80203

Restrictions:

- 1 Item A is restricted. (i) to service that originates or terminates within the County of Eagle, State of Colorado, and (ii) against maintaining an office at any other place than Vail, Colorado, (iii) to operations and service only between November 1 of each year and April 30 of the following year, and (iv) to the use of vehicles having a capacity of 20 persons or less, including the driver
- 2 Item B is restricted against providing service between Denver Union Station and points within a two-mile radius thereof, on the one hand, and all points located within the County of Eagle, State of Colorado, on the other hand.
3. Authority is expressly granted to tack Items B, C, and D with each other to provide a through transportation service.
- 4 Item E is restricted against the use of four-wheel drive vehicles.
- II. Transportation of passengers and their baggage, in taxicab service:
 - A. between all points in the County of Eagle, State of Colorado, and between said points, on the one hand, and all points in the State of Colorado, on the other hand,
 - B. between Rubey Park bus stop in Aspen, Colorado, or upper bus stop at Snowmass Mall in Snowmass, Colorado, or Pitkin County Airport in Pitkin, Colorado, on the one hand, and Denver International Airport, on the other hand;
 - C from Rubey Park bus stop in Aspen, Colorado, or upper bus stop at Snowmass Mall in Snowmass, Colorado, or Pitkin County Airport in Pitkin County, Colorado, to Glenwood Springs, Colorado, or to the transportation center in Vail, Colorado;
 - D from Pitkin County Airport in Pitkin County, Colorado, to Walker Field, at Grand Junction, Colorado,
 - E. between Grand Junction, Colorado (including Grand Junction Municipal Airport, Walker Field), on the one hand, and ski areas located in Colorado west of the Continental Divide, on the other hand.

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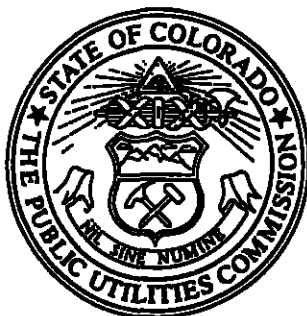
THE PUBLIC UTILITIES COMMISSION

OFFICE LEVEL TWO 1580 LOGAN STREET
DENVER, COLORADO 80203

Restrictions:

- 1 Item A is restricted to service that originates or terminates within the County of Eagle, State of Colorado
 - 2 Items B, C and D are restricted to providing service only between the dates of November 1 of each year and May 1 of the following year
 - 3 Item E is restricted against the use of four-wheel drive vehicles.
 - 4 Item E is restricted against service that originates or terminates within the County of Eagle, Colorado.
- III. Transportation of passengers and their baggage in call-and-demand limousine service:
- A. between Denver International Airport and Denver Union Station and points within a two-mile radius of Denver Union Station, on the one hand, and all points located within the County of Eagle, State of Colorado, on the other hand;
 - B. between all points located within a 60-mile radius of the intersection of Mill and Main Streets in Aspen, Colorado and between said points, on the one hand, and all points in the State of Colorado, on the other hand;
 - C. between points lying within a one-mile radius of the Denver International Airport in Denver, Colorado, on the one hand, and all points in the Counties of Pitkin, Garfield, Eagle, Summit, and Clear Creek, on the other hand;
 - D. between points in the County of El Paso, State of Colorado, on the one hand, and points in the State of Colorado, on the other hand;
 - E. between all points in the County of Park, State of Colorado, on the one hand, and all points in the County of Summit, State of Colorado, on the other hand;
 - F. from Rubey Park bus stop in Aspen, Colorado, or upper bus stop at Snowmass Mall in Snowmass, Colorado, or Pitkin County Airport in Pitkin County, Colorado, to Glenwood Springs, Colorado, or to the transportation center in Vail, Colorado;

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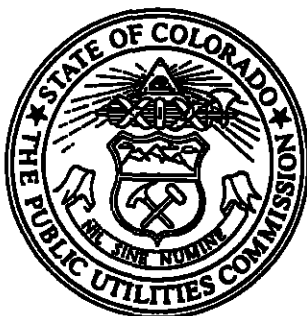
DENVER, COLORADO 80203

- G. from Pitkin County Airport in Pitkin County, Colorado, to Walker Field, at Grand Junction, Colorado,
- H. between Grand Junction, Colorado (including Grand Junction Municipal Airport, Walker Field), on the one hand, and ski areas located in Colorado west of the Continental Divide, on the other hand.

Restrictions

1. Item A is restricted. (i) to service that either originates or terminates within the County of Eagle, State of Colorado, (ii) against maintaining an office at any other place than Vail, Colorado; (iii) to operations and service only between November 1 of each year and April 30 of the following year; and (iv) to the use of vehicles having a capacity of 20 persons or less, including the driver
2. Item B is restricted: (i) to the use of vehicles with a passenger capacity of 14 or less excluding the driver; (ii) against any service which originates or terminates in the County of Eagle, State of Colorado, and (iii) such that any service to points in Eagle, Summit, or Lake Counties, must originate or terminate within a 15-mile radius of the intersection of Mill and Main Streets in Aspen.
3. To the extent that Item B and Item C overlap, only one operating right exists.
4. Item D is restricted. (i) to the use of vehicles with a seating capacity of eight or more passengers plus the driver; (ii) against providing service to or from Powder Horn Ski Area in the County of Mesa, State of Colorado, (iii) against providing service to or from points in the Counties of Adams, Arapahoe, Boulder, Chaffee, Denver, Douglas, Fremont, Jefferson, Gilpin, Pueblo, or Teller, State of Colorado or points located within a five-mile radius of the intersection of 6th and Harrison Streets in Leadville, Colorado (ski areas and ski resorts are specifically excepted from this restriction); and (iv) against providing service from points in the County of Gunnison, State of Colorado.
5. Items F and G are restricted to providing service only between the dates of November 1 of each year and May 1 of the following year
6. Item H is restricted against the use of four-wheel drive vehicles.

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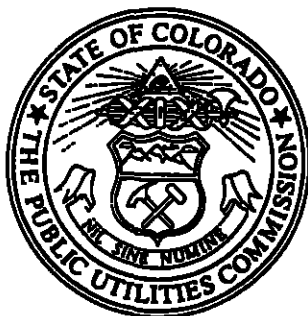
- IV. Transportation, in sightseeing service, of passengers:
- A. between all points in the State of Colorado, provided the transportation service originates and terminates in Eagle County;
 - B. between all points located within a 50-mile radius of the intersection of Mill and Main Streets in Aspen, Colorado;
 - C. between Rubey Park bus stop in Aspen, Colorado, or upper bus stop at Snowmass Mall in Snowmass, Colorado, or Pitkin County Airport in Pitkin, Colorado, on the one hand, and Denver International Airport, on the other hand;
 - D. between Grand Junction, Colorado (including Grand Junction Municipal Airport, Walker Field), on the one hand, and ski areas located in Colorado west of the Continental Divide, on the other hand

Restrictions

- 1. Item B is restricted: (i) against the use of four-wheel drive vehicles, and (ii) to providing service that both originates and terminates within a 15-mile radius of the intersection of Main and Mill Streets in Aspen, Colorado.
- 2. Item C is restricted to providing service only between the dates of November 1 of each year and May 1 of the following year.
- 3. Item D is restricted against the use of four-wheel drive vehicles.

- V. Transportation, in charter service, of passengers and their baggage,
- A. between all points located within a 50-mile radius of the intersection of Mill and Main Streets in Aspen, Colorado,

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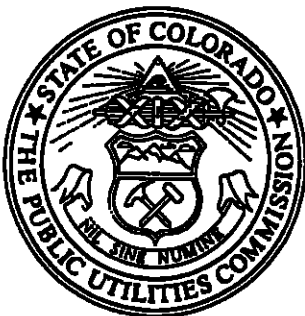
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- B. between points in the County of El Paso, State of Colorado, on the one hand, and all points in the State of Colorado, on the other hand;
- C. between all points in the County of Park, State of Colorado, on the one hand, and all points in the County of Summit, State of Colorado, on the other hand;
- D. between all points located within a 50-mile radius of Vail, Colorado,
- E. between points lying within a one-mile radius of the Denver International Airport in Denver, Colorado, on the one hand, and all points in the Counties of Pitkin, Garfield, Eagle, Summit, and Clear Creek, on the other hand;
- F. from Rubey Park bus stop in Aspen, Colorado, or upper bus stop at Snowmass Mall in Snowmass, Colorado, or Pitkin County Airport in Pitkin County, Colorado, to Glenwood Springs, Colorado, or to the transportation center in Vail, Colorado;
- G. from Pitkin County Airport in Pitkin County, Colorado, to Walker Field, at Grand Junction, Colorado;
- H. between Grand Junction, Colorado (including Grand Junction Municipal Airport, Walker Field), on the one hand, and ski areas located in Colorado west of the Continental Divide, on the other hand.

Restrictions:

- 1. Item A is restricted: (i) against the use of four-wheel drive vehicles; (ii) to providing service that both originates and terminates within a 15-mile radius of the intersection of Main and Mill Streets in Aspen, Colorado; and (iii) to the use of vehicles with a passenger capacity of 15 or more, excluding the driver
- 2. Item B is restricted: (i) to providing service that both originates and terminates in El Paso County on service provided to or from points in the County of Weld, State of Colorado, (ii) against providing service to or from points in the Counties of Adams, Arapahoe, Boulder, Chaffee, Denver, Douglas, Fremont, Jefferson, Gilpin, Pueblo, or Teller, State of Colorado or points located within a five-mile radius of the intersection of 6th and Harrison Streets in Leadville, Colorado (ski areas and ski resorts are specifically excepted from this restriction), and (iii) against providing service from points in the County of Gunnison, State of Colorado.

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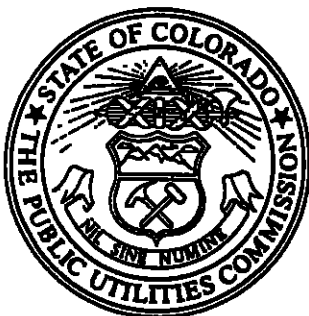
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3. Item D is restricted (i) to providing service that must either originate or terminate within the County of Eagle, State of Colorado, and (ii) against providing service that originates or terminates within a 15-mile radius of the intersection of Main and Mill Streets in Aspen, Colorado
4. Items F and G are restricted to providing service only between the dates of November 1 of each year and May 1 of the following year.
5. Item H is restricted against the use of four-wheel drive vehicles.
- VI. Transportation of passengers and their baggage in special bus service:
 - A. between all points within the County of Eagle, State of Colorado, and between said points, on the one hand, and all points located within Leadville, Colorado and a ten-mile radius thereof, on the other hand;
 - B. between all points located within a 50-mile radius of the intersection of Mill and Main Streets in Aspen, Colorado;
 - C. between points lying within a one-mile radius of the Denver International Airport in Denver, Colorado, on the one hand, and all points in the Counties of Pitkin, Garfield, Eagle, Summit, and Clear Creek, on the other hand;
 - D. from Rubey Park bus stop in Aspen, Colorado, or upper bus stop at Snowmass Mall in Snowmass, Colorado, or Pitkin County Airport in Pitkin County, Colorado, to Glenwood Springs, Colorado, or to the transportation center in Vail, Colorado;
 - E. from Pitkin County Airport in Pitkin County, Colorado, to Walker Field, at Grand Junction, Colorado;
 - F. between Grand Junction, Colorado (including Grand Junction Municipal Airport, Walker Field), on the one hand, and ski areas located in Colorado west of the Continental Divide, on the other hand.

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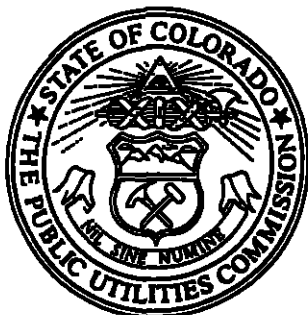
Restrictions:

- 1 Item A is restricted to service that either originates or terminates within the County of Eagle, State of Colorado
2. Item B is restricted: (i) against the use of four-wheel drive vehicles; (ii) to providing service that both originates and terminates within a 15-mile radius of the intersection of Main and Mill Streets in Aspen, Colorado; (iii) to the use of vehicles with a passenger capacity of 15 or more, excluding the driver
- 3 Items D and E are restricted to providing service only between the dates of November 1 of each year and May 1 of the following year
4. Item F is restricted against the use of four-wheel drive vehicles.

Decision No. C99-821

Mailed Date: August 3, 1999

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TAB 2

ASSET PURCHASE AGREEMENT

by and among

DELIVERY ACQUISITION, INC.,

as "BUYER",

EAST WEST RESORT TRANSPORTATION HOLDINGS, LLC,

TRANSPORTATION MANAGEMENT SYSTEMS, LLC,

EAST WEST RESORT TRANSPORTATION, LLC,

27TH STREET, LLC,

2701 MIDLAND AVENUE, LLC,

224 ANNIE ROAD, LLC

and

23 PONDEROSA CIRCLE, LLC

as "SELLERS",

HF HOLDING CORP.,

HF TRANSPORTATION, LLC,

and

EAST WEST RESORTS MANAGEMENT II, LLC

as "PARENTS"

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "**Agreement**") is made and entered into as of June __, 2008 (the "**Execution Date**"), by and among (i) **DELIVERY ACQUISITION, INC.**, a Colorado corporation ("**Buyer**"), (ii) **EAST WEST RESORT TRANSPORTATION HOLDINGS, LLC**, a Delaware limited liability company ("**EW Holdings**"), **TRANSPORTATION MANAGEMENT SYSTEMS, LLC** ("**TMS**"), a Delaware limited liability company, **EAST WEST RESORT TRANSPORTATION, LLC**, a Delaware limited liability company ("**EWRT**"), **27TH STREET, LLC**, a Colorado limited liability company, **2701 MIDLAND AVENUE, LLC**, a Colorado limited liability company, **224 ANNIE ROAD, LLC**, a Colorado limited liability company, and **23 PONDEROSA CIRCLE, LLC**, a Colorado limited liability company (each, a "**Seller**", and collectively, "**Sellers**"), and (iii) **HF HOLDING CORP.**, a Colorado corporation, **HF TRANSPORTATION, LLC**, a Delaware limited liability company, and **EAST WEST RESORTS MANAGEMENT II, LLC**, a Colorado limited liability company (each, a "**Parent**", and collectively, "**Parents**").

RECITALS

1. EWRT operates a transportation business under the name "Colorado Mountain Express" (the "**Business**") utilizing the assets of the other Sellers
2. Sellers desire to sell and transfer all of their assets that are utilized in the operation of the Business and assign certain liabilities to Buyer related to the operations of the Business, and Buyer desires to purchase and acquire such assets and desires to assume such liabilities of Sellers on the terms and conditions set forth herein.
3. Sellers desire to retain certain liabilities related to the operation of the Business.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I **DEFINITIONS**

1.1 **Definitions** For purposes of this Agreement, the following terms shall have the respective meanings set forth below:

"2008 Bonuses" means all Sellers' employee bonuses for the twelve (12) month period ending September 30, 2008 that have been earned prior to the Closing Date or that would have been earned after the Closing Date pursuant to the Sellers' Bonus Plan consistently applied with the past practices of Sellers.

"Accrued PTO" means the number of days and hours of paid time off to which a Continuing Employee has an entitlement to, but has not yet been taken or received prior to the date of such Continuing Employee's termination by Sellers

"Acquisition Documents" means the Deposit Escrow Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Employment Agreements, the Supply Agreement, the ES Lease Agreement, the Daily Lot Special Warranty Deed, the Assignment of Purchase Contract, the Exclusivity and Right of First Offer Agreement, the Special Warranty Deeds, the Assignment and Assumption of Lease Agreements, the Escrow Agreement, the Remediation Agreement (if executed), the Disclosure Schedules and any other documents or certificates executed and delivered in connection with the foregoing or this Agreement.

"Actual Capital Expenditures" means the actual amount of capital expenditures made by Sellers in accordance with the Capex Schedule, plus any other capital expenditures not set forth in the Capex Schedule but otherwise approved by Buyer pursuant to Section 5.5(p), minus the proceeds received from the sale of any vehicles in excess of the sixty (60) vehicles Sellers are allowed to sell or transfer pursuant to the terms hereof.

"Adjustment Amount" has the meaning set forth in Section 2.11(c).

"Affiliate" shall mean, with respect to any Person, (i) in the case of an individual, any member of the immediate family of the Person; (ii) any officer, director, trustee, partner, member, manager or employee of the Person or any holder of any class of the voting securities or equity interest in the Person; (iii) any corporation, partnership, limited liability company, trust or other entity controlling, controlled by or under common control with the Person; or (iv) any officer, director, trustee, partner, member, manager, employee or holder of the outstanding voting securities of any corporation, partnership, limited liability company, trust or other entity controlling, controlled by or under common control with the Person. As used in the preceding sentence, the term "control" of any Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Agreement" has the meaning set forth in the Preamble.

"Airport Consents" has the meaning set forth in Section 5.3(b).

"Approval Period" has the meaning set forth in Section 5.3(a).

"Approvals" has the meaning set forth in Section 3.17

"Appurtenances" means all privileges, rights, easements, hereditaments and appurtenances belonging to or for the benefit of the Land, including all easements appurtenant to and for the benefit of any Land (a "**Dominant Parcel**") for, and as the primary means of access between, the Dominant Parcel and a public way, or for any other use upon which lawful use of the Dominant Parcel for the purposes for which it is presently being used is dependent, and all rights existing in and to any streets, alleys, passages and other rights-of-way included thereon or adjacent thereto (before or after vacation thereof) and vaults beneath any such streets.

"Assets" has the meaning set forth in Section 2.1

"Assignment and Assumption Agreement" has the meaning set forth in Section 6.6(b)

"Assignment and Assumption of Lease Agreement" has the meaning set forth in Section 6.6(k).

"Assignment of Purchase Contract" has the meaning set forth in Section 6.6(h).

"Assumed Accrued Vacation" means the aggregate Accrued PTO of all Continuing Employees who have executed PTO Election Forms prior to the PTO Election Date in accordance with Section 5.9(b).

"Assumed Advance Deposits" means any and all deposits received by Sellers prior to the Effective Time for services to be performed by Buyer after the Effective Time.

"Assumed Contracts" means the Contracts which Buyer has agreed to assume as set forth on a list agreed upon between Buyer and Sellers on or before the Pre-Closing Date and delivered to the Escrow Agent pursuant to Section 6.6 (the **"Assumed Contracts Schedule"**), together with any other Contracts entered into after the Pre-Closing Date with Buyer's approval pursuant to Section 5.5.

"Assumed Liabilities" has the meaning set forth in Section 2.7(a).

"Audited Financial Statements" has the meaning set forth in Section 3.4.

"Bill of Sale" has the meaning set forth in Section 6.6(a).

"Breach" means any breach of, or failure to perform or comply with, any covenant or obligations, in any Contract, or any event which with the passing of time or the giving of notice or both would constitute such a breach or failure.

"Business" has the meaning set forth in the first Recital.

"Business Day" means any day of the year on which banks are not required or authorized by law to close in Denver, Colorado.

"Buyer" has the meaning set forth in the Preamble.

"Buyer Affiliate" means any Person that controls, is controlled by, or is under common control with Buyer.

"Buyer's Closing Conditions" has the meaning set forth in Article VI.

"Cap Amount" means (a) for the period from the Effective Time through and including October 15, 2009, \$12,500,000 and (b) for the period from and including October 16, 2009 through and including October 15, 2010, \$5,000,000.

"Capex Adjustment" means the amount (which may be a positive or negative number) determined by the following formula:

$$A - B = \text{Capex Adjustment}$$

"A" = the Actual Capital Expenditures

"B" = the Capex Schedule

If the Capex Adjustment is negative, the Purchase Price shall be reduced by the Capex Adjustment and if positive the Purchase Price shall be increased by the Capex Adjustment.

"Capex Schedule" means the capital expenditures of Sellers set forth on a schedule to be mutually agreed upon between Buyer and Sellers on or before the Pre-Closing Date.

"Cash Portion" means the Purchase Price less the Cap Amount and the Deposit.

"Closing" has the meaning set forth in Section 2.6.

"Closing Conditions" has the meaning set forth in Article VII.

"Closing Date" has the meaning set forth in Section 2.6

"CME Points" has the meaning set forth in Section 2.13(a)

"COBRA" has the meaning set forth in Section 3.18(b)

"COBRA Coverage" has the meaning set forth in Section 9.6(a).

"Code" means the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

"Commercially Reasonable Efforts" has the meaning set forth in Section 5.3(f).

"Competitive Business" means the business of providing ground transportation, car rental, taxi, airport shuttle or limousine services to individuals or groups which directly or indirectly competes with the Business as it was conducted by Sellers immediately prior to the Closing Date or as it is conducted by Buyer on or after the Closing Date anywhere within any county within the State of Colorado in which Sellers conducted the Business immediately prior to the Closing Date (including, without limitation, Denver, Jefferson, Clear Creek, Summit, Eagle, Garfield and Pitkin counties) or in which Buyer conducts the Business after the Closing.

"Complimentary Service Obligations" has the meaning set forth in Section 2.13(a).

"Confidentiality Agreement" has the meaning set forth in Section 9.10.

"Consents" has the meaning set forth in Section 3.16.

"Continuing Employees" has the meaning set forth in Section 5.9(a).

"Contract" shall mean any contract, agreement, instrument, arrangement, understanding or commitment, whether or not written, to which any Seller is a party that is related to the Business, the Assets, or the operations of any Seller.

"Daily Lot Special Warranty Deed" has the meaning set forth in Section 6.6(h)

"Deposit" has the meaning set forth in Section 2.5(b).

"Deposit Escrow Agreement" has the meaning set forth in Section 2.3(b).

"DIA Concession Agreement" means that certain concession agreement between the City and County of Denver and EWRT dated June 27, 2006, as amended from time to time.

"DIA Consent" has the meaning set forth in Section 5.3(b).

"Disclosure Obligations" has the meaning set forth in Section 9.8.

"Disclosure Schedules" means the disclosure schedules referred to in Article III delivered by Sellers and Parents to Buyer concurrently with the execution and delivery of this Agreement together with supplements thereto delivered after the execution and delivery of this Agreement in accordance with the terms of this Agreement.

"Due Diligence Period" means the period of time beginning on the Execution Date and ending on the later to occur of (i) thirty (30) days after the Execution Date or (ii) the date upon which Sellers have delivered or cause to be delivered to the Escrow Agent each of the items set forth in Section 6.6.

"Eagle County Airport Concession Agreement" means that certain concession agreement by and between the Eagle County Air Terminal Corporation and EWRT dated August 8, 2006, as amended from time to time

"Eagle Consent" has the meaning set forth in Section 5.3(b).

"Effective Time" has the meaning set forth in Section 2.6.

"Employee Benefit Plan" means any (a) nonqualified deferred compensation, equity or equity-based compensation or retirement plan or arrangement, (b) qualified defined contribution retirement plan or arrangement which is an "employee pension benefit plan" (within the meaning set forth in ERISA §3(2)), (c) qualified defined benefit retirement plan or arrangement which is an "employee pension benefit plan" (including any "multiemployer plan" within the meaning set forth in ERISA §§ 3(37) and 4001(a)(3)), (d) "employee welfare benefit plan" (within the meaning set forth in ERISA §3(1)) and material fringe benefit plan or arrangement and (e) other employment, retirement, bonus, incentive, severance, retention, vacation, employee benefit or compensatory plan, arrangement, agreement, policy, practice or program, in each case, whether written or unwritten, funded or unfunded, formal or informal, and whether or not subject to ERISA.

"Employment Agreements" have the meaning set forth in Section 6.6(e).

"Environmental Clean-Up Threshold" has the meaning set forth in Section 5.1.

"Environmental Law" or **"Environmental Laws"** means any federal, state or local statute, Laws, ordinance, code, rule, regulation, order or decree, regulating, relating to or imposing liability or standards of conduct concerning protection or preservation of human health, or the environment, including, but not limited to (i) any discharge, release or emission to air, water (including surface water and groundwater), or land, (ii) the generation, treatment, recycling, storage, disposal, transportation or other handling or management of waste or Hazardous Materials, (iii) the manufacture, distribution, treatment, storage, transportation or disposal or recycling of chemical substances or mixtures, (iv) contamination or pollution of any environmental medium, or (v) responsibility for environmental conditions or activities affecting the environment; including, without limitation, the following Acts as amended, and all regulations promulgated thereunder or in connection therewith, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the federal Clean Air Act, the federal Clean Water Act, the Toxic Substances Control Act, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the Occupational Safety and Health Act of 1970.

"Equity Interests" has the meaning set forth in Section 2.2(b).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any regulations promulgated thereunder.

"ERISA Affiliate" means each Person which, pursuant to ERISA § 4001(b), is required to be treated as a single employer with any Seller pursuant to Code § 414(b), (c), (m) or (o).

"ES" means Edwards Station, LLC, a Delaware limited liability company.

"Escrow Agent" means US Bank, N A.

"Escrow Agreement" has the meaning set forth in Section 2.3(b).

"ES Lease Agreement" has the meaning set forth in Section 6.6(g)

"ES Management Agreement" has the meaning set forth in Section 6.6(s).

"EW Holdings" has the meaning set forth in the Preamble.

"EWRT" has the meaning set forth in the Preamble.

"Excluded Assets" has the meaning set forth in Section 2.2.

"Exclusivity and Right of First Offer Agreement" has the meaning set forth in Section 6.6(i).

"Execution Date" has the meaning set forth in the Preamble.

"Final Settlement Statement" has the meaning set forth in Section 2.10.

"GAAP" means generally accepted accounting principles in effect in the United States, consistently applied.

"Hazardous Material" or **"Hazardous Materials"** means and includes petroleum and petroleum products, flammables, explosives, radioactive materials, any asbestos containing material (as defined under applicable Environmental Laws), polychlorinated biphenyls, lead and/or any hazardous, toxic or dangerous waste, substance or material now or hereafter defined as such, or as a hazardous substance, or any similar term, by or in the Environmental Laws or health and safety Laws.

"HIPAA" has the meaning set forth in Section 3.18(b).

"Identified Locations" shall mean the facilities of Sellers located at 273 Warren Avenue, Silverthorne, CO; 434 Edwards Access Rd., Edwards, CO; 5317 County Rd. 154, Glenwood Springs, CO; and 401 27th St., Glenwood Springs, CO.

"Improvements" means all buildings, structures, fixtures and improvements located on the Land or included in the Assets, including those under construction

"Indemnifiable Loss" has the meaning set forth in Section 8.4.

"Indemnification Claim" has the meaning set forth in Section 8.3.

"Indemnified Party" has the meaning set forth in Section 8.3.

"Indemnifying Party" has the meaning set forth in Section 8.3.

"Indemnity Payment" has the meaning set forth in Section 8.4

"Independent Accountants" has the meaning set forth in Section 2.11(d).

"Intellectual Property Assets" means all intellectual property owned or licensed (as licensor or licensee) by Sellers related to or used in the operations of the Business in which Sellers have a proprietary interest, including:

- (a) Marks;
- (b) Patents;
- (c) all registered and unregistered copyrights in both published works and unpublished works;
- (d) Trade Secrets; and
- (e) Net Names.

"Interim Financial Statements" has the meaning set forth in Section 3.4.

"IRS" shall mean the Internal Revenue Service

"Key Management Employees" has the meaning set forth in Section 6.6(c).

"Knowledge" has the meaning set forth in Section 3.29 with respect to Sellers and Parents and Section 4.6 with respect to Buyer.

"Land" means all parcels and tracts of land in which Sellers have an ownership interest or right to use

"Laws" has the meaning set forth in Section 3.13(a)

"Leased Real Property" means all Land and Improvements subject to a Real Property Lease.

"Licenses and Permits" has the meaning set forth in Section 3.9(a).

"Liens" means all mortgages, pledges, liens (including, without limitation, Tax liens), charges, security interests, claims, conditions, restrictions, encumbrances, obligations and defects in title, of any type, kind or nature whatsoever.

"Losses" has the meaning set forth in Section 8.2(a).

"Marketing Certificates" has the meaning set forth in Section 2.13(a).

"Marks" means each Seller's names, all assumed fictional business names, trade names, registered and unregistered trademarks, service marks and applications related to or used in the operations of the Business.

"Material Adverse Change" means a material adverse change, whether or not covered by insurance, in (i) the Business, (ii) the operations, personnel, assets, liabilities, prospects, results of operations or condition (financial or other) of Sellers or (iii) the Assets, taken as a whole (other than, with respect to clauses (i), (ii) and (iii), a change directly resulting from or directly caused by (A) general economic conditions and (B) general conditions existing in the van or limousine transportation business). For the purposes of Section 6.4, the definition of a Material Adverse Change shall be read not to include either clause (A) or (B) of the parenthetical phrase at the end of such definition. For the purposes of Sections 3.26, 5.14 and 5.15, the definition of Material Adverse Change shall be read not to include clause (B) of the parenthetical phrase at the end of such definition.

"Material Consents" means the Consents listed on Annex II.

"Material Contract" has the meaning set forth in Section 3.14(a).

"Negative Estimated Net Cash Flow" means \$1,000,000.

"Net Names" means all rights in internet web sites, internet domain names and other web addresses presently used by each Seller in the operations of the Business.

"New Hires" has the meaning set forth in Section 5.5(i).

"Non-Compete Period" has the meaning set forth in Section 9.11(a).

"Noncompetition Agreements" has the meaning set forth in Section 6.6(l).

"Non-Real Estate Encumbrances" has the meaning set forth in Section 3.6(b).

"Notice of Claim" has the meaning set forth in Section 8.3.

"Notices" has the meaning set forth in Section 11.2.

"Objection Certificate" has the meaning set forth in Section 2.11(a).

"Owned Real Property" means all Land and all Improvements and Appurtenances thereto used in the Business in which any Seller has an ownership interest.

"Parent" and **"Parents"** have the meaning set forth in the Preamble.

"Patents" means all patents, patent applications and inventions and discoveries that may be patentable related to or used in the operations of the Business.

"Permitted Encumbrances" has the meaning set forth in Section 3.6(b).

"Permitted Non-Real Estate Encumbrances" has the meaning set forth in Section 3.6(b).

"Permitted Real Estate Encumbrances" has the meaning set forth in Section 5.11(d).

"Person" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or governmental body.

"Pre-Closing Date" means the Business Day following the expiration of the Due Diligence Period.

"Preliminary Settlement Statement" has the meaning set forth in Section 2.10.

"Premises" means the Real Property.

"Proceeding" means a suit, claim, action, arbitration, audit, hearing or other legal proceeding (whether civil, criminal, administrative or judicial, whether formal or informal, whether public or private, or whether before a governmental body or arbitrator).

"Pro-Forma Title Insurance Commitments" has the meaning set forth in Section 6.6(m).

"PTO Election Date" has the meaning set forth in Section 5.9(b)

"PTO Election Form" has the meaning set forth in Section 5.9(b).

"PUC" means the Colorado Public Utilities Commission

"PUC Order" means an order issued by the PUC (a) taking notice of the STB Approval and (b) updating the PUC's records accordingly.

"Purchase Price" has the meaning set forth in Section 2.3.

"Qualified Beneficiaries" has the meaning set forth in Section 9.6(b).

"Real Estate Encumbrances" has the meaning set forth in Section 3.6(a)

"Real Property" means all Owned Real Property and Leased Real Property.

"Real Property Leases" means all leases, subleases, licenses, concessions and other agreements (written or oral) pertaining to the use or occupancy of any Land and Improvements used in Business, including all amendments, extensions, renewals, guaranties, and other agreements with respect thereto.

"Recorded Documents" has the meaning set forth in Section 5.11(a)(ii).

"Reimbursement Amount" has the meaning set forth in Section 2.13(a).

"Remediation Agreement" has the meaning set forth in Section 5.1.

"Retained Liabilities" has the meaning set forth in Section 2.7(b).

"Retired Indebtedness" has the meaning set forth in Section 2.9(a).

"Revised Purchase Price" has the meaning set forth in Section 2.11(a).

"Sales Taxes" has the meaning set forth in Section 9.2.

"Selected Representations and Warranties" has the meaning set forth in Section 8.1.

"Seller" and **"Sellers"** have the meaning set forth in the Preamble.

"Sellers' Bonus Plan" means the employee bonus plans of Sellers in effect as of the date of the most recent Audited Financial Statements.

"Sellers' Closing Conditions" has the meaning set forth in Article VII.

"Seller's Plan" means each Employee Benefit Plan that any Seller or ERISA Affiliate thereof sponsors, maintains, ever has maintained or been obligated to maintain, or to which any of them contributes, ever has contributed or ever has been obligated to contribute, at any time during the seven (7)-calendar year period immediately preceding the Execution Date, or with respect to which any Seller or ERISA Affiliates of such Seller has or could have any direct or indirect, fixed or contingent liability.

"Sellers' Representative" has the meaning set forth in Section 11.19.

"Special Warranty Deeds" has the meaning set forth in Section 6.6(j).

"Specified Environmental Obligations" has the meaning set forth in Section 5.1.

"STB Approval" has the meaning set forth in Section 3.17.

"Supply Agreement" has the meaning set forth in Section 6.6(f).

"Survey" has the meaning set forth in Section 5.11(a).

"Tax" and **"Taxes"** have the meaning set forth in Section 3.21(a).

"Tax Return" has the meaning set forth in Section 3.21(a).

"Threshold" has the meaning set forth in Section 8.5.

"Title Commitment" has the meaning set forth in Section 5.11(a)(i).

"Title Insurer" has the meaning set forth in Section 5.11(a).

"Title Objection" has the meaning set forth in Section 5.11(c).

"TMS" has the meaning set forth in the Preamble.

"Transport Approval" has the meaning set forth in Section 5.3(a).

"Transportation Laws" has the meaning set forth in Section 3.13(b).

"Trade Secrets" means all know-how, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process technology, plans, drawings and blue prints related to or used in the operations of the Business and which is not in the public domain or otherwise legally obtainable from third parties.

"Unpaid Obligations" has the meaning set forth in Section 2.9(b).

"Vail Daily Lot" means that parcel of real property described in the purchase contract for real estate attached as an exhibit to the Assignment of Purchase Contract.

"Vail Daily Lot Amount" means (a) \$1,300,000 if the Vail Daily Lot has been acquired by a Seller prior to the Closing, or (b) if the Vail Daily Lot has not been so acquired by a Seller prior to the Closing, an amount equal to the aggregate deposits with respect to the Vail Daily Lot paid by Sellers or Parents prior to May 31, 2008 plus any additional deposits paid by Sellers or Parents after such date with the prior written consent of Buyer pursuant to the purchase contract for real estate attached as an exhibit to the Assignment of Purchase Contract.

"WARN Act" has the meaning set forth in Section 3.19(a).

"Working Visas" has the meaning set forth in Section 5.13.

"Working Visas List" has the meaning set forth in **Section 5.13**.

ARTICLE II **THE PURCHASE**

2.1 **Purchase and Sale of Assets**. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, but effective as of the Effective Time, Sellers shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Sellers, free and clear of any and all Liens other than Permitted Encumbrances, all of Sellers' right, title and interest in and to all of Sellers' property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located, that are utilized in the operation of the Business, including, but not limited to, the following (but excluding the Excluded Assets):

(a) All tangible personal property, including all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, inventory, materials, vehicles and other items of tangible personal property of every kind owned or leased by Sellers, together with any transferable express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereto and all maintenance records in the possession of Sellers and other documents relating thereto (including such tangible personal property listed on **Schedule 2.1(a)** and the owned and leased vehicles listed on **Schedule 3.25**);

(b) All Assumed Contracts;

(c) All transferable licenses, permits, registrations, certificates, consents, accreditations, approvals, governmental authorizations, franchises and all pending applications related thereto or renewals thereof, together with assignments thereof, if required, and all waivers which Sellers currently have, if any, of any requirements pertaining to such licenses, permits, registrations, certificates, consents, accreditations, approvals and franchises;

(d) Copies of all data and records related to the current operations of Sellers, including, to the extent they exist, prospect lists, referral sources, operating guides and manuals, financial and accounting records, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and records and all current personnel records;

(e) All of the intangible rights and property of Sellers, including (i) all Intellectual Property Assets, (ii) all Marks, including, without limitation, the names "Colorado Mountain Express", "CME Premier" and "Resort Express"; (iii) all Patents; (iv) all registered and unregistered copyrights in both published works and unpublished works; (v) all know-how, trade secrets, confidential or proprietary information, customer lists, software (to the extent assignable), technical information, data, process technology, drawings and blueprints; (vi) all telephone numbers, email addresses and Net Names, and (vii) going concern value and all goodwill;

(f) All claims of Sellers against third parties relating to the Assets or the Assumed Liabilities, whether choate or inchoate, known or unknown, contingent or non-

contingent, except for accounts receivable for services performed prior to the Effective Time and such other claims excluded from the Assets pursuant to Section 2.2(e);

(g) All rights of Sellers relating to deposits, fees and prepaid expenses, claims for refunds and rights to offset in respect thereof that are not listed on Schedule 2.2(c), or otherwise excluded pursuant to Section 2.2; and

(h) All Real Property.

All of the property and assets to be transferred to Buyer hereunder are herein referred to collectively as the "Assets".

Notwithstanding the foregoing, the transfer of the Assets pursuant to this Agreement shall not include the assumption of any liability related to any Assets unless Buyer expressly assumes that liability pursuant to Section 2.7(a).

2.2 Excluded Assets. Notwithstanding anything in this Agreement to the contrary, the Assets shall not include, and, at the Closing, Sellers shall not sell, assign, transfer or deliver to Buyer:

(a) all minute books, equity ownership records of Sellers and rights and obligations of Sellers under their respective operating agreements,

(b) any member interests, equity interests and other securities of Sellers (collectively, the "Equity Interests");

(c) those rights relating to deposits, fees and prepaid expenses and claims for refunds and rights to offset in respect thereof listed on Schedule 2.2(c) (other than the Assumed Advance Deposits);

(d) all insurance benefits (including rights and proceeds) arising from or relating to the Assets, except to the extent set forth in Section 8.6;

(e) all claims of a Seller against third parties relating to the Assets or the Assumed Liabilities to the extent (i) such claim relates to a Retained Liability or (ii) necessary for such Seller to comply with a claim for indemnification made by an Indemnified Party or any other obligations of Sellers hereunder or under any Acquisition Document;

(f) all of the Contracts except the Assumed Contracts;

(g) all personnel records and other records that Sellers are required by law to retain in its possession;

(h) all claims for refund of Taxes and other governmental charges of whatever nature relating to the Assets with respect to any period ending prior to the Effective Time, except for refunds for fuel excise Taxes for the current Tax year which shall be pro rated

between Buyer and Sellers through the Effective Time based on the number of days Sellers owned the Business during 2008;

- (i) all rights in connection with and assets of the Seller's Plans;
- (j) all rights of Sellers under this Agreement or any Acquisition Documents to which Sellers are a party;
- (k) all accounts receivable of Sellers in existence as of the Effective Time for services performed prior to the Effective Time and all rights with respect thereto;
- (l) all cash and cash equivalents; and
- (m) the property and the assets expressly listed in Schedule 2.2(m).

All of the property and assets that, pursuant to this Section 2.2, will not be transferred to Buyer hereunder are herein referred to collectively as the "Excluded Assets."

2.3 Purchase Price. The consideration for the Assets to be purchased by Buyer (the "Purchase Price") will be: (i) \$41,500,000; minus (ii) the Assumed Advance Deposits, the Assumed Accrued Vacation, the Negative Estimated Net Cash Flow and the Unpaid Obligations (to the extent assumed by Buyer pursuant to Section 2.9), plus or minus; (iii) the Capex Adjustment plus (iv) the Vail Daily Lot Amount (if the Vail Daily Lot is acquired with Buyer's written approval in accordance with Section 5.16). The Purchase Price shall be subject to further adjustments pursuant to Sections 2.11. The Purchase Price shall be paid as follows:

- (a) The Cash Portion will be paid at the Closing by wire transfer of immediately available funds to an account designated by Sellers;
- (b) Subject to the terms of the Escrow Agreement by and among Buyer, the Sellers' Representative and the Escrow Agent reasonably satisfactory to Buyer and Sellers (the "Escrow Agreement"), the Cap Amount as of the Closing Date will be transferred by wire transfer to an account designated by the Escrow Agent at Closing; and
- (c) Subject to the terms of the Deposit Escrow Agreement by and among Buyer, the Sellers' Representative and the Escrow Agent reasonably satisfactory to Buyer and Sellers herewith (the "Deposit Escrow Agreement"), the Escrow Agent will release and transfer the Deposit (plus all interest accrued thereupon) at the Closing by wire transfer of immediately available funds to an account designated by Sellers

2.4 Allocation of Purchase Price. The Purchase Price shall be allocated for tax purposes in accordance with an allocation schedule to be agreed upon between Buyers and Sellers, as of the Pre-Closing Date. After the Closing, the parties hereto shall make consistent use of the allocation, fair market value and useful lives specified in such schedule for all Tax purposes and in all filings, declarations and reports with the IRS in respect thereof, including the reports required to be filed under Section 1060 of the Code. Buyer shall prepare and deliver the IRS Forms 8594 to Sellers within forty-five (45) days after the Closing Date to be filed with the

IRS. In any Proceeding or investigation related to the determination of any Tax, none of Buyer, Sellers or Parents shall contend or represent that such allocation is not a correct allocation.

2.5 The Pre-Closing. Unless this Agreement is terminated by Buyer, on or prior to the Pre-Closing Date:

(a) Sellers and Parents, as the case may be, shall execute and/or deliver or cause to be executed and/or delivered to the Escrow Agent, the documents, certificates and agreements set forth in Section 6.6, and

(b) Buyer shall transfer \$4,150,000 (the "Deposit") by wire transfer to an account designated by the Escrow Agent, and execute and/or deliver to the Escrow Agent the documents, certificates and agreements set forth in Section 7.3

2.6 The Closing. The purchase and sale provided for in this Agreement (the "Closing") will take place either by electronic exchange of signature pages (to be followed by the provision of hardcopies of such signature pages by mail) or in person at Brownstein Hyatt Farber Schreck, LLP, 410 17th Street, Suite 2200, Denver, Colorado 80202 on the later to occur of (i) the date that is the first Business Day of the month following the month in which the Closing Conditions have been met or waived (or the first Business Day of the next month in the event that the Closing Conditions have been met only within the last three (3) days of a month) or (ii) August 1, 2008, unless Buyer and Sellers otherwise agree. The "Closing Date" shall be the date on which the Closing actually takes place. The "Effective Time" shall be 12:01 a.m. on the Closing Date.

2.7 Allocation of Liabilities.

(a) Assumed Liabilities. On the Closing Date, but effective as of the Effective Time, Buyer shall assume and agree to discharge only the following liabilities of Sellers (the "Assumed Liabilities"):

(i) any liability for unperformed services to Sellers' customers for which Sellers have, in the ordinary course of business consistent with past practice, (A) accepted Assumed Advance Deposits or (B) otherwise committed to deliver services, but excluding, in either case, any contracts or commitments to deliver services at a discount of greater than twenty percent (20%) to Sellers' published rates;

(ii) any liability arising after the Effective Time under the Assumed Contracts that is readily ascertainable from the express written terms of the Assumed Contract, but excluding any liability arising after the Effective Time to the extent that it (A) arises out of or relates to any Breach by Sellers prior to the Effective Time of an Assumed Contract, or (B) arises out of or relates to any obligation that was required to be performed or fulfilled by Sellers under any Assumed Contract prior to the Effective Time;

(iii) any liability of Sellers described in Schedule 2.7(a);

(iv) any liability of Sellers for Assumed Accrued Vacation; and

(v) any compliance obligations under applicable Law relating to the Working Visas for any Persons hired by Buyer for the 2008/09 ski season, but not any liability relating to a violation of Law nor any contractual liability relating thereto.

Except for the Assumed Liabilities, Buyer is not assuming any liabilities, obligations or commitments of Sellers, direct or indirect, known or unknown, contingent or otherwise, of whatsoever kind or nature.

(b) **Retained Liabilities.** The Retained Liabilities shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Sellers. "**Retained Liabilities**" shall mean any and all liabilities, obligations or commitments of Sellers, direct or indirect, known or unknown, contingent or otherwise, of whatsoever kind or nature (other than the Assumed Liabilities), including, without limitation:

(i) all incurred but unpaid accounts payable of Sellers whether or not due and payable as of the Effective Time;

(ii) any liability to Sellers' customers, suppliers, contractors and other third parties arising out of or relating to the conduct of the Business prior to the Effective Time, except to the extent expressly assumed by Buyer under **Section 2.7(a)**;

(iii) any liability under any Contract other than an Assumed Contract, including any liability arising out of or relating to Sellers' indebtedness, credit facilities or any security interest related thereto;

(iv) any liability arising out of or relating to products or services of Sellers to the extent provided or sold on or prior to the Effective Time, other than to the extent expressly assumed by Buyer under **Section 2.7(a)**;

(v) any liability arising after the Effective Time under any Assumed Contracts (A) that is not readily ascertainable from the express written terms of such Assumed Contract, or (B) to the extent such liability (1) arises out of or relates to a Breach by Sellers prior to the Effective Time of an Assumed Contract, or (2) arises out of or relates to any obligation that was required to be performed or fulfilled by Sellers under an Assumed Contract prior to the Effective Time;

(vi) any liability for Taxes incurred by Sellers or Parents, including (A) any Taxes arising as a result of Sellers' operation of the Business or ownership of the Assets, (B) any Taxes that will arise as a result of the sale of the Assets pursuant to this Agreement in excess of \$100,000, and (C) any deferred Taxes in existence as of the Effective Time of any nature subject, however, to the provisions of **Section 2.12**;

(vii) any environmental, health or safety liabilities arising out of or relating to the operation of the Business by Sellers (including Sellers' contractors, subcontractors or agents) or the ownership of the Assets by Sellers, or Sellers' leasing or ownership of any real property;

(viii) any liability arising out of or relating to the use of the assets of ES by any Seller or Parent.

(ix) any liability under any Seller's Plan or relating to payroll, sick leave, workers' compensation, unemployment benefits, pension benefits, employee stock option or profit-sharing plans, health care plans or benefits or any other employee plans or benefits of any kind for Sellers' employees (whether or not incurred by virtue of the consummation of the transactions contemplated hereunder and under the Acquisition Documents), other than the Assumed Accrued Vacation;

(x) any liability of Sellers arising out of or relating to the 2008 Bonuses;

(xi) any liability of Sellers under any employment, severance, retention or termination agreement between Sellers and any employee of Sellers, other than the Assumed Accrued Vacation;

(xii) any liability of Sellers arising out of or relating to any employee grievance to the extent that it relates to any event occurring or circumstance in existence on or prior to the Effective Time, whether or not the affected employee is hired by Buyer;

(xiii) any liability of any Seller to another Seller or a Parent or an Affiliate of any Seller or Parent;

(xiv) any liability to indemnify, reimburse or advance amounts to any officer, director, manager, member, employee or agent of Sellers (provided, that this clause (xiv) does not constitute a waiver by any Seller or Parent of any rights with respect to applicable insurance coverage);

(xv) any liability of any Seller to make distributions to any of its members;

(xvi) any liability arising out of any Proceeding or investigation involving Sellers or the Business pending as of the Effective Time;

(xvii) any liability arising out of any Proceeding or investigation involving Sellers or the Business commenced after the Effective Time to the extent that it arises out of or relates to any occurrence or event happening prior to the Effective Time;

(xviii) any liability arising out of or resulting from Sellers' compliance or noncompliance with any Laws or governmental, judicial or administrative order;

(xix) any liability of Sellers under this Agreement or the Acquisition Documents to which Sellers are a party or any other document executed by a Seller in connection with the transactions contemplated hereby and thereby;

(xx) any liability that Sellers or Parents incurred in connection with the preparation of this Agreement, the Acquisition Documents and the transactions contemplated hereunder and thereunder, including, without limitation, the fees and expenses of their legal counsel, financial advisors and brokers;

(xxi) any obligation relating to the Retired Indebtedness that is not assumed by Buyer pursuant to the terms hereof; and

(xxii) any liability of any Seller based upon such Seller's acts or omissions occurring after the Effective Time.

2.8 Closing Deliverables On or prior to the Closing Date, Sellers and Parents, as the case may be, shall execute and/or deliver or cause to be executed and/or delivered, the documents, certificates and instruments set forth in Section 6.7; and Buyer shall execute and/or deliver the documents, certificates and instruments set forth in Section 7.4.

2.9 Delivery of Assets; Payoff of Indebtedness.

(a) Sellers shall deliver the Assets to Buyer at the Closing free and clear of all Liens other than the Permitted Encumbrances, and shall buy-out or otherwise pre-pay all loans, capital leases and other indebtedness of Sellers, including, without limitation, the loans, capital leases and indebtedness set forth on a schedule agreed to between Buyer and Sellers on or prior to the Pre-Closing Date (the "**Retired Indebtedness**").

(b) If at the Closing, there are any obligations related to the Retired Indebtedness that have not yet been fully paid or discharged as of the Closing Date (the "**Unpaid Obligations**"), Buyer may waive the closing conditions as to the payment of the Unpaid Obligations pursuant to Article VI and subject to Sections 2.10 and 2.11 assume and pay the Unpaid Obligations.

2.10 Settlement Statement. At Closing, Sellers shall deliver to Buyer a preliminary settlement statement executed by Sellers' Representative setting forth as of the Closing Date (i) Sellers' estimate of the Assumed Accrued Vacation, the Assumed Advance Deposits, the Actual Capital Expenditures and the Unpaid Obligations, if any, (ii) Sellers' calculation of the Capex Adjustment and (iii) Sellers' calculation of the Purchase Price pursuant to the terms hereof (the "**Preliminary Settlement Statement**"). The Closing shall occur based on the Preliminary Closing Statement. Within five (5) Business Days following the Closing Date, Sellers shall deliver to Buyer a settlement statement setting forth as of the Closing Date the amounts for the items described in clauses (i), (ii) and (iii) of the immediately preceding sentence, based upon information then known to Sellers (the "**Final Settlement Statement**"). The Purchase Price set

forth in the Final Settlement Statement shall be the Purchase Price and, subject to any adjustment set forth in Section 2.11, shall be binding and conclusive on the parties hereto.

2.11 Post Closing Purchase Price Adjustment and Procedure

(a) Within thirty (30) days following the Closing Date, Buyer shall deliver to Sellers' Representative either (i) a countersigned executed copy of the Final Settlement Statement or (ii) a certificate (the "**Objection Certificate**") setting forth in reasonable detail Buyer's objection to the estimates and/or calculations set forth in the Final Settlement Statement, and calculating Buyer's estimate of the Purchase Price based upon such objections (the "**Revised Purchase Price**"). If Buyer delivers a countersigned Final Settlement Statement, the Purchase Price calculated therein shall be binding and conclusive upon all parties hereto.

(b) If, within fifteen (15) days following delivery of the Objection Certificate, the Sellers' Representative has not given Buyer written notice of its objection as to the calculations set forth in the Objection Certificate (which notice shall state the basis of the objection of the Sellers' Representative in reasonable detail based on the information then available to Sellers, but such notice may request additional information that the Sellers' Representative reasonably believes is necessary to the objection, which information Buyer shall promptly furnish to the Sellers' Representative), then the Revised Purchase Price calculated by Buyer shall be deemed to be the Purchase Price and be binding and conclusive on the parties hereto and shall be used in the calculation of the Adjustment Amount.

(c) The "**Adjustment Amount**" (which may be a positive or negative number) will be equal to the amount determined by the following formula:

$$A - B = \text{Adjustment Amount}$$

"**A**" = the Purchase Price, but subject to adjustment to take into account any difference between the Purchase Price set forth in the Final Settlement Statement and the Purchase Price set forth in the Preliminary Settlement Statement

"**B**" = the Revised Purchase Price

If the Adjustment Amount is positive, the Adjustment Amount shall be paid by wire transfer by Sellers to an account specified by Buyer. If the Adjustment Amount is negative, the difference between the Purchase Price and the Revised Purchase Price shall be paid by wire transfer by Buyer to an account specified by Sellers' Representative. Within three (3) Business Days after the calculation of the Revised Purchase Price becomes binding and conclusive on the parties hereto pursuant to Section 2.11(d), Sellers or Buyer, as the case may be, shall make the wire transfer payment provided for in this Section 2.11.

(d) If the Sellers' Representative duly gives Buyer a notice of objection, and, if the Sellers' Representative and Buyer fail to resolve the issues outstanding with respect to what the Purchase Price shall be within thirty (30) days of Buyer's receipt of the

Sellers' Representative's objection notice, the Sellers' Representative and Buyer shall submit the issues remaining in dispute to the Denver, Colorado office of Deloitte & Touche USA, LLP (or such other independent public accountants as mutually agreed upon by Buyer and the Sellers' Representative) (the "**Independent Accountants**") for resolution. If issues are submitted to the Independent Accountants for resolution, (i) the Sellers' Representative and Buyer shall furnish or cause to be furnished to the Independent Accountants such work papers and other documents and information relating to the disputed issues as the Independent Accountants may request and are available to that party or its agents and shall be afforded the opportunity to present to the Independent Accountants any material relating to the disputed issues and to discuss the issues with the Independent Accountants; (ii) the determination by the Independent Accountants, as set forth in a notice to be delivered to both the Sellers' Representative and Buyer within sixty (60) days of the submission to the Independent Accountants of the issues remaining in dispute, shall be final, binding and conclusive on the parties hereto and shall be used in the calculation of the Adjustment Amount; and (iii) Sellers, on a pro rata basis, and Buyer will each bear fifty percent (50%) of the fees and costs of the Independent Accountants for such determination.

(e) On or prior to the Pre-Closing Date, Buyer and Sellers will negotiate in good faith an agreement through which Sellers will compensate Buyer for certain costs and expenses incurred by Buyer with respect to, and provide incentives to Buyer for assisting Seller with its marketing during the 2008/09 ski season in the event that the Closing does not occur on or before October 31, 2008.

2.12 **Prorations.**

(a) Any rents, prepaid items, utility bills, costs, expenses and other applicable items with respect to the Real Property shall be prorated as of the Closing Date. Sellers shall assign to Buyer all deposits with respect to the Real Property and Assumed Liabilities.

(b) Ad valorem real property taxes and special district assessments and tangible personal property taxes with respect to the Assets for the calendar year in which the Closing occurs shall be prorated between Sellers and Buyer as of the Closing Date based upon the tax payment amounts for 2007 which Sellers have actually paid prior to the Closing.

2.13 **Post-Closing Arrangements**

(a) At the Closing, Sellers will deliver to Buyer a schedule detailing (x) the total outstanding amount of CME Points (the "**CME Points**") together with a list of Persons entitled to redeem such CME Points, and (y) all outstanding gift certificates, credits for service in Sellers' computer system, Marketing Certificates or Credits, the Dundee credits, outstanding complimentary service obligations and Persons otherwise entitled to redeem services from Sellers (collectively with the CME Points, the "**Complimentary Service Obligations**"). After the Closing, Buyer agrees to honor and deliver services to all Persons to whom Sellers owe Complimentary Service Obligations

as of the Closing Date. Sellers shall reimburse Buyer on a dollar for dollar basis for the delivery of the Complimentary Service Obligations other than Marketing Certificates or Credits at the then applicable rate for such services charged by Buyer or, in the case of CME Points, Sellers shall reimburse Buyer for the actual dollar value of CME Points honored by Buyer (each a "Reimbursement Amount"). Buyer will deliver to Sellers on a quarterly basis a notice detailing the Complimentary Service Obligations (other than Marketing Certificates) honored by Buyer during the previous quarter and Sellers shall pay the applicable Reimbursement Amount for such quarter within thirty (30) days of receipt of such notice. On the schedule of Complimentary Service Obligations, Sellers shall indicate when, if ever, the rights of such Persons to the Complimentary Service Obligations expire. Buyer shall not be obligated to provide services to any person for any Complimentary Service Obligations that have expired and shall not be entitled to reimbursement for any Complimentary Service Obligations that have expired but as to which Buyer performs anyway. For the purposes of this Agreement, "Marketing Certificates or Credits" shall mean actual certificates redeemable, or credits reflected in Sellers' computer system as redeemable (which have an expiration date of one (1) year from the date of issuance), for Sellers services which Sellers have distributed or credited to certain hotels and other high volume customers for marketing purposes consistent with the ordinary course of business and past practices of Sellers. On the schedule delivered by Sellers pursuant to the terms of this Section 2.13(a) Sellers shall indicate which Complimentary Service Obligations are Marketing Certificates or Credits and shall represent and warrant to Buyer that such list of Marketing Certificates or Credits is true, complete and accurate. As of the date of this Agreement, an aggregate of \$263,888.75 of Marketing Certificates or Credits are outstanding

(b) If, after the Closing, a Person who has given a deposit to Sellers which becomes an Assumed Advance Deposit cancels their reservation and such Person is entitled to receive a refund of all or a portion of their deposit, Buyer agrees to refund such deposit or portion thereof directly to such Person or to reimburse Sellers to the extent Sellers refund such deposit.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLERS AND PARENTS

As of the Execution Date, the Pre-Closing Date and the Closing Date, Sellers and Parents, jointly and severally, represent and warrant to Buyer as follows (it is acknowledged and agreed by Sellers, Parents and Buyer that a fact or matter disclosed on a Schedule referenced in a particular Section of this Article III shall be deemed to provide exceptions or otherwise qualify each other Section of this Article III with respect to which it is reasonably apparent that such fact or matter applies):

3.1 Organization and Good Standing.

(a) Each Seller is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation or organization, with all requisite power and authority to conduct the Business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under the Contracts to which it is a party. Each Seller is duly qualified to do business as a limited liability company and is in good standing under the laws of each state or other jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification.

(b) Complete and accurate copies of the organizational and constituent documents of each Seller, as currently in effect, have been provided to Buyer.

3.2 Authority, Enforceability and Capitalization

(a) Each Parent and each Seller has all requisite right, power and authority to execute and deliver this Agreement and the Acquisition Documents to which it is a party and to perform its obligations under this Agreement and such Acquisition Documents, and such execution, delivery and performance has been duly authorized by all necessary action of each Seller, each Parent, the manager(s) or managing member(s) of each Seller, as applicable, the manager(s), managing member(s) or directors of each Parent, as applicable, the members of each Seller under the governing documents of each Seller and applicable Laws and the members or shareholders of each Parent, as applicable, under the governing documents of each Parent and applicable Laws

(b) This Agreement has been duly executed and delivered by each Seller and each Parent and constitutes the legal, valid and binding obligation of each Seller and each Parent enforceable against each of them in accordance with its terms. Upon the execution and delivery by each Seller and each Parent of the Acquisition Documents to which each of them is a party, each of such Acquisition Documents will constitute the legal, valid and binding obligation of such Seller and Parent, enforceable against each of them in accordance with its terms.

(c) A list of all of the issued and outstanding Equity Interests has previously been delivered to Buyer and such Equity Interests are held beneficially and of record by the Persons listed on such list. All of the outstanding Equity Interests have been validly issued and are fully paid and non-assessable. There are no outstanding options, warrants, rights or other agreements or commitments of any kind, contingent or otherwise, obligating any Seller to issue or sell any securities or obligations convertible into, or exchangeable for, any securities or other equity interests of such Seller

(d) Except as set forth in Schedule 3.2(d), EW Holdings owns no stock, membership interests or other form of equity interests (including options, warrants or phantom rights) in any Person (whether directly or indirectly) other than in the other Sellers.

3.3 Effect of Agreement. Except as set forth in Schedule 3.3, the execution and delivery of this Agreement and the Acquisition Documents to which Sellers or Parents are a party and the consummation of the transactions described in and contemplated hereby and thereby do not and will not, directly or indirectly, with or without the giving of notice or lapse of time, or both:

(a) violate any provision of any Seller's organizational and constituent documents, or any resolution of the members or manager(s) or managing member(s) of any Seller;

(b) give any governmental agency or Person the right to challenge any of the actions of Sellers or Parents contemplated by this Agreement or the Acquisition Documents to which Sellers or Parents are a party or to exercise any remedy or obtain any relief under any applicable Laws or any judicial or administrative order to which Sellers, Parents, the Business, or any of the Assets, may be subject;

(c) contravene, conflict with or result in a violation or breach of any of the terms or requirements of, or give any governmental agency the right to revoke, withdraw, suspend, cancel, terminate or modify, any governmental authorization that is held by any Seller or that otherwise relates to the Assets or to the Business;

(d) cause Buyer to become subject to, or to become liable for the payment of, any Taxes;

(e) accelerate any payment of indebtedness, or constitute an event entitling the holder of indebtedness of Sellers or Parents, or otherwise binding upon the Assets or the Business to accelerate or to increase the rate of interest presently in effect with respect to such indebtedness,

(f) breach any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under or to cancel any Material Contract, or

(g) result in the creation of any Liens upon or with respect to the Assets or the Business

3.4 Financial Statements. Sellers have provided Buyer with: (a) audited and consolidated balance sheets as of and for the fiscal years ended December 31, 2006 and December 31, 2007 for EW Holdings and the related audited and consolidated statements of income, changes in member equity and cash flows for the fiscal year then ended, including in each case the notes thereto (collectively, the "Audited Financial Statements"), and (b) an unaudited and consolidated balance sheet of EW Holdings as of March 31, 2008, and the related unaudited and consolidated statements of income, changes in its member's equity, and cash flows for the twelve (12) months then ended (the "Interim Financial Statements"). Such financial statements fairly present in all material respects the financial condition and the results of operations, changes in member's equity and cash flows of EW Holdings as of the respective dates of and for the periods referred to in such financial statements, all in accordance with GAAP; provided, however, that the Interim Financial Statements are subject to normal year-end

adjustments (which would not be material in the aggregate) and do not contain footnotes or other presentation items that would appear in a company's audited financial statements. The financial statements referred to in this Section 3.4 reflect and will reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements. Such financial statements have been and will be prepared from and are in accordance with the accounting records of Sellers. Such accounting records are in all material respects accurate, up-to-date and complete, and have been maintained in accordance with EW Holdings' normal business practices. All of such accounting records are in the actual possession and direct control of Sellers. Sellers have also delivered to Buyer copies of all letters from Sellers' auditors to Sellers during the twenty-four (24) months preceding the Execution Date, together with copies of all responses thereto.

3.5 No Brokers None of Sellers or Parents has entered into any contract, arrangement or understanding with any Person that may result in the obligation of Sellers, Parents or Buyer to pay any finder's fees, brokerage or agent's commissions or other like payments to any finder, broker or sales agent in connection with the negotiations leading to this Agreement or the Acquisition Documents or the consummation of the transactions contemplated hereby or thereby.

3.6 Title to Assets.

(a) To Sellers' Knowledge, no Liens affect title to the Owned Real Property other than (i) those evidenced by Recorded Documents, (ii) the matters described as standard printed exceptions to title in the Title Commitment, and (iii) the Liens, if any, listed in Schedule 3.6(a) (collectively, the "**Real Estate Encumbrances**").

(b) Sellers own good and transferable leasehold title to the Leased Property free and clear of any Liens other than the terms of the Real Estate Leases and good and transferable title to all of the Assets (other than the Real Property) free and clear of any Liens, other than those described in Schedule 3.6(b) (the "**Non-Real Estate Encumbrances**"). Sellers warrant to Buyer that, at the time of the Closing, all Assets (other than the Real Property) shall be free and clear of all Non-Real Estate Encumbrances other than those identified on Schedule 3.6(b) as acceptable to Buyer (the "**Permitted Non-Real Estate Encumbrances**" and, together with the Permitted Real Estate Encumbrances, the "**Permitted Encumbrances**").

(c) The Assets (i) constitute all of the assets, tangible and intangible, of any nature whatsoever utilized by Sellers in the operation of the Business in the manner presently operated, and (ii) no Person, other than Sellers, owns any assets, tangible and intangible, of any nature whatsoever utilized in the Business.

3.7 Absence of Undisclosed Liabilities Sellers have no liability, debt, obligation, duty or liability of any type, contingent or otherwise, liquidated or unliquidated, known or unknown, of any nature or in any amount except for those (a) reflected or reserved against in the Audited Financial Statements or the Interim Financial Statements, (b) current liabilities incurred in the ordinary course of business consistent with past practice of such Person since the date of

the Interim Financial Statements, (c) under any Contracts (other than Breaches thereof), and (d) as set forth on Schedules 3.7 or 3.8

3.8 Litigation. Except as set forth on Schedule 3.8 or Schedule 3.22, there is no Proceeding (or, to Sellers' Knowledge, an investigation) pending or, to Sellers' Knowledge, threatened, against the Assets, or against Sellers, Parents or any members of Sellers (or in which any Seller, Parent or members or shareholders of Sellers or Parents is a plaintiff or otherwise a party thereto) relating to the Business or the Assets, or that challenges, or would reasonably be expected to have the effect of preventing, delaying, making illegal or otherwise interfering with, this Agreement, the Acquisition Documents to which Sellers or Parents are a party, or any of the transactions contemplated by this Agreement and such Acquisition Documents.

3.9 Permits, Licenses, Etc.

(a) Except as set forth on Schedule 3.9(a), each Seller has all local, state and federal licenses, permits, registrations, certificates, contracts, consents, accreditations and approvals material to the Business (collectively, the "Licenses and Permits") and necessary for such Seller to occupy, operate and conduct the Business as it is now conducted, and there do not exist any waivers or exemptions relating thereto except as set forth on Schedule 3.9(a). All such Licenses and Permits are set forth on Schedule 3.9(a). There is no material default on the part of Sellers or to Sellers' Knowledge any other party under any of the Licenses and Permits. There exist no grounds for revocation, suspension or limitation of any of the Licenses or Permits. No notices have been received by Sellers or Parents, and to Sellers' Knowledge, no notices exist with respect to any threatened, pending, or possible revocation, termination, suspension or limitation of the Licenses and Permits.

(b) To Sellers' Knowledge, except as set forth on Schedule 3.9(b), each employee of each Seller has all Licenses and Permits required for each such employee to perform such employee's designated functions and duties for such Seller in connection with conducting the Business. To Sellers' Knowledge, there is no default under, nor does there exist any grounds for revocation, suspension or limitation of, any such employee Licenses and Permits.

3.10 Customers and Referral Sources. The books and records included in the Assets contain a substantially and materially correct and complete list of each of the referral sources, customers and counterparties of the Business within the past three (3) years.

3.11 Condition of Assets.

(a) Each Asset that is tangible personal property is, in all material respects, in good repair and good operating condition, ordinary wear and tear excepted (including, without limitation, ordinary course repair and maintenance), is suitable for immediate use for its intended purpose in the ordinary course of business and is free from defects. No such item of tangible personal property is in material need of repair or replacement, other than repair and maintenance conducted in the ordinary course of business. Sellers have not deferred to a date after the Closing Date any routine repair or maintenance on any

tangible personal property that was scheduled to be conducted or would otherwise have been completed, in the ordinary course of business, prior to the Closing Date

(b) The assets reflected on the Interim Financial Statements constitute all of the assets, properties and other rights used by Sellers in the conduct of the Business except for those assets acquired or disposed of in the ordinary course of business subsequent to the date of the Interim Financial Statements. Except as set forth on Schedule 3.11(b) and except for the assets of ES which are available for use by Buyer pursuant to the ES Lease Agreement and the Supply Agreement, Sellers collectively own or have the right to use all the material assets necessary to, and currently utilized in the operation of, the Business as presently conducted. None of the Parents or any of their Affiliates (other than Sellers) owns any of the assets currently utilized in the Business except for the assets of ES which are available for use by Buyer pursuant to the ES Lease Agreement and the Supply Agreement.

3.12 Absence of Changes. Except as set forth in Schedule 3.12, since the date of the most recent Audited Financial Statements delivered to Buyer, unless with respect to the period following the Execution Date (x) approved in writing by Buyer in advance pursuant to Section 5.5, or (y) otherwise expressly permitted by Section 5.5 or elsewhere in this Agreement, there has been no:

(a) change in the condition, financial or otherwise, of Sellers, which has, resulted in, or would reasonably be expected to result in a Material Adverse Change;

(b) material loss, damage or destruction of or to any of the material Assets, whether or not covered by insurance;

(c) sale, lease, transfer or other disposition by any Seller of, or mortgages or pledges of or the imposition of any Lien on, any portion of the Assets other than the sale of up to a total of sixty (60) of Sellers older vehicles since December 31, 2007 listed in section (c) of Schedule 3.12 conducted in the ordinary course consistent with past practice (other than the transfer of a total of seven (7) of such sixty (60) vehicles, one (1) to each Key Management Employee and one (1) to each of two other significant employees if the Closing occurs and such Key Management Employee, or significant employee, as applicable, becomes an employee of Buyer at the Closing),

(d) increase in the compensation payable by any Seller to any of its members, employees, managers, independent contractors or agents, or any increase in, or institution of, any bonus, insurance, pension, profit sharing or other employee benefit plan or arrangements made to, for or with the members, employees, directors, managers, shareholders, independent contractors or agents of any Seller, other than increases in salaries of employees of the Business (other than any members or shareholders of Sellers or Parents or management employees) in the ordinary course of business consistent with past practice,

(e) adjustment or write off of accounts receivable or reduction in reserves for accounts receivable outside of the ordinary course of business or any change in the collection, payment or credit experience or practices of any Seller;

(f) change in the Tax or cash basis accounting methods or practices employed by any Seller or change in depreciation or amortization policies;

(g) issuance or sale by Sellers or Parents, or any Contract entered into by Sellers or Parents for the issuance or sale, of any membership interests or securities convertible into or exchangeable for membership interests of any Seller;

(h) merger, consolidation or similar transaction involving any Seller,

(i) strike, work stoppage or other labor dispute adversely affecting the Business;

(j) termination, amendment, waiver or cancellation of any material rights or claims of any Seller, under any Material Contract or any License and Permit;

(k) incurrence of indebtedness for borrowed money other than in the ordinary course of business consistent with past practice;

(l) execution of a Contract (or amendment to any existing Contract) obligating any Seller to purchase goods or services for a period in excess of thirty (30) days;

(m) execution of any agreement, arrangement or transaction between any Seller and any other Seller or an Affiliate of any Seller;

(n) any other transaction not in the ordinary course of business and consistent with past practice of the Business that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Change; or

(o) binding commitment with respect to any of the foregoing.

3.13 Compliance with Laws.

(a) Except as set forth on Schedule 3.9(a), 3.13(a) and 3.20(g), to Sellers' Knowledge, (i) each Seller is, and at all times since January 1, 2001, has been in material compliance with, all laws, statutes, ordinances, decrees, orders, rules and regulations (collectively, the "**Laws**") applicable to it or related to the conduct or operation of the Business or ownership of its assets, and (ii) no Seller has received, since January 1, 2001, any notice (including, without limitation, a notice of investigation) or other communication (whether oral or written) from any governmental authority or any other Person regarding (1) any actual, alleged, possible, or potential violation of, or failure to comply with, any such Laws or (2) any failure to comply with any judgment, order, writ, injunction or decree of any court enforcing such Laws.

(b) Except as set forth on Schedule 3.13(b), to Sellers' Knowledge, each Seller operates, and at all times since January 1, 2001, has operated, in material compliance with each of the applicable federal, state and local transportation Laws, including, without limitation, the rules and regulations of the Surface Transportation Board, the U.S. Department of Transportation, the Federal Motor Carrier Safety Administration, the Colorado Department of Transportation, the Colorado Public Utilities Commission, and the Motor Carrier Exemption under the Fair Labor Standards Act and Colorado Wage Order (collectively, the "Transportation Laws").

(c) No event has occurred or circumstance exists that (with or without notice or lapse of time) (A) would reasonably be expected to constitute or result in a material violation by any Seller of, or a material failure on the part of any Seller to comply with, any Transportation Laws or (B) would reasonably be expected to give rise to any obligation on the part of any Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature with respect to any Transportation Laws.

(d) Except as set forth on Schedule 3.13(d), none of the Persons listed in Section 3.29 is actually aware of any Laws (including, without limitation, Transportation Laws) or amendments to (including, without limitation, Transportation Laws) Laws publicly pending before a governmental entity or regulatory agency that would reasonably be expected to result in a Material Adverse Change, if such Laws or amendments were enacted. For the purposes of this Section 3.13(d), a Law or an amendment to a Law shall be pending if such Law or amendment has been officially and publicly announced by a governmental entity.

3.14 Contracts and Commitments.

(a) Sellers have previously provided to Buyer complete and accurate copies of each of the following Contracts to which any Seller is a party that are utilized in the Business or to which the Assets are subject (each, a "Material Contract"):

(i) each Contract that involves performance of services or delivery of goods or materials by any Seller of an amount or value in excess of \$25,000 per annum;

(ii) each Contract that involves performance of services or delivery of goods or materials to any Seller of an amount or value in excess of \$25,000 per annum;

(iii) each Contract affecting the ownership of, leasing of, title to, use of or any leasehold or other interest in any real property or personal property (except personal property leases and installment and conditional sales agreements having a value per item or aggregate payments of less than \$15,000 and with a term of less than one (1) year);

(iv) each Contract that is not terminable within thirty (30) days without penalty greater than \$25,000;

(v) each employment, compensation or severance agreement, other than oral at-will employment agreements made in the ordinary course of business consistent with past practice pursuant to which Sellers provide for no severance or other compensation after termination;

(vi) each Contract with any labor union or other employee representative of a group of employees relating to wages, hours and other conditions of employment;

(vii) each Contract (however named) involving a sharing of profits, revenues, proceeds, losses, costs or liabilities by any Seller with any other Person;

(viii) each Contract containing covenants that in any way purport to restrict any Seller's business activity or limit the freedom of any Seller to engage in any line of business or to compete with any Person;

(ix) each power of attorney of any Seller that is currently effective and outstanding;

(x) each Contract entered into other than in the ordinary course of business that contains or provides for an express undertaking by any Seller to be responsible for consequential damages;

(xi) each Contract for capital expenditures in excess of \$25,000;

(xii) each Contract evidencing or providing for (a) any indebtedness for borrowed money and (b) any Lien on the Assets, including, in each case, any guaranties of indebtedness,

(xiii) each Real Property Lease;

(xiv) each Contract not otherwise listed above, the absence of which, would reasonably be expected to have a materially adverse impact upon the successful operation of the Business; and

(xv) each amendment, supplement and modification (whether oral or written) in respect of any of the foregoing.

(b) Other than as disclosed on Schedule 3.14(b), no Seller is a party to an unwritten Material Contract.

(c) No Material Contract has been modified or amended except in writing, which writing has been provided to Buyer. No material provision of a Material Contract has been waived by any Seller except in writing, which writing has been provided to Buyer.

(d) Each Material Contract is in full force and effect and is valid and enforceable by the contracting Seller thereto in accordance with its terms. No Seller is,

and, to Sellers' Knowledge, none of the other parties to any Material Contract is, in default under or in Breach or violation of any Material Contract. No Seller has received written notice of any asserted claim of default by any other party under, or a Breach or violation of, any Material Contract

(e) Attached as Schedule 3.14(c) is a complete and accurate list of all Contracts utilized in the operation of the Business as it is currently operated by Sellers. Sellers have noted on Schedule 3.14(c) each Contract in which either (i) a Seller has agreed to supply or deliver services after the date of the most recent Audited Financial Statements at a discount to Sellers' scheduled prices, or (ii) a Person has agreed to supply or deliver goods or services to Sellers after the date of the most recent Audited Financial Statements at a discount to such Person's scheduled prices, and except as set forth in Schedule 3.14(c), Sellers have not given or agreed to give any Person nor have Sellers accepted or agreed to accept from any Person any such discounts.

3.15 Real Property.

(a) Schedule 3.15(a) sets forth the address and description of each parcel of Owned Real Property. With respect to each parcel of Owned Real Property:

(i) except as set forth in Schedule 3.15(a)(i), no Seller has leased or otherwise granted to any Person the right to use or occupy such Owned Real Property or any portion thereof; and

(ii) except as set forth on Schedule 3.15(a)(ii) and except with respect to the Vail Daily Lot, there are no outstanding options, rights of first offer or rights of first refusal to purchase such Owned Real Property or any portion thereof or interest therein.

(b) Schedule 3.15(b) sets forth the address of each parcel of Leased Real Property, and a true and complete list of all Real Property Leases for each such Leased Real Property (including the date and name of the parties to such Real Property Leases). Sellers have delivered to Buyer a true and complete copy of each such Real Property Lease. Except as set forth in Schedule 3.15(b), with respect to each of the Real Property Leases:

(i) Sellers' possession and quiet enjoyment of the Leased Real Property under such Real Property Lease has not been disturbed and, to Sellers' Knowledge, there are no disputes with respect to such Real Property Lease:

(ii) Sellers have not subleased, licensed or otherwise granted any Person the right to use or occupy the Leased Real Property or any portion thereof, other than any subleases to employees for housing that will be terminated within thirty (30) days following the Execution Date; and

(iii) No Seller has collaterally assigned or granted any other Lien in such Real Property Lease or any interest therein.

(c) The Real Property comprises all of the real property and improvements upon real property used or currently intended by Sellers to be used in the Business other than the Vail Daily Lot: and except as set forth on Schedule 3.15(a)(ii) or Schedule 3.15(c) and except with respect to the Vail Daily Lot, no Seller is a party to any agreement or option to purchase any real property or interest therein.

(d) There are no pending or, to Sellers' Knowledge, contemplated, zoning changes, "floor area ratio" changes, variances, special zoning exceptions, conditions or agreements which have resulted in or would reasonably be expected to result in a Material Adverse Change. Public utilities currently serve all utility requirements necessary for the current use of all Real Property. Except for the Real Property owned by 23 Ponderosa Circle, LLC, all of the Real Property is currently zoned in the zoning category which permits operation of such properties as now used, operated and maintained for the operation of the Business, and, to Sellers' Knowledge, except for the Real Property owned by 23 Ponderosa Circle, LLC, none of such Real Property nor its respective use is in violation of any local governmental rule, ordinance, regulation or building code.

(e) None of Sellers or Parents has received written notice of any condemnation, expropriation or other proceeding in eminent domain affecting any parcel of Real Property or any portion thereof or interest therein. There is no injunction, decree, order, writ or judgment outstanding, or, except as set forth on Schedule 3.15(c), any claim, litigation, administrative action or similar proceeding, pending or, to Sellers' Knowledge, threatened, relating to the ownership, lease, use or occupancy of the Real Property or any portion thereof.

3.16 Notices, Consents and Waivers. Other than as disclosed on Schedule 3.16, none of Sellers or Parents are required to give any notice or obtain the consent, waiver, permit or approval of any Person (a) in connection with the execution and delivery of this Agreement or the Acquisition Documents to which Sellers or Parents are a party or, to the Knowledge of Sellers, any of the Acquisitions Documents to which Sellers or Parents are not a party or the consummation of the transactions contemplated hereby or thereby, or (b) in order to permit the continuation of the Assumed Contracts upon the same terms and conditions as are contained in such Assumed Contracts immediately prior to the consummation of the transactions contemplated by this Agreement and the Acquisition Documents (whether or not listed on Schedule 3.16, the "Consents").

3.17 Governmental Approvals. Other than the approval of the Surface Transportation Board (the "STB Approval"), the PUC Order and as disclosed on Schedule 3.17, no consent, approval, order or authorization of, or registration, declaration or filing with, any governmental authority or any other Person is required in connection with the execution and delivery of this Agreement or the Acquisition Documents by Sellers or Parents or the consummation by Sellers and Parents of the transactions contemplated hereby or thereby (whether or not listed on Schedule 3.17, but excluding the STB Approval and the PUC Order, the "Approvals")

3.18 Employee Benefits.

(a) Sellers have previously provided to Buyer complete and accurate copies of each Seller's Plan. To Sellers' Knowledge, each Seller's Plan (and each related trust, insurance contract or fund) complies in form and in operation in all material respects with the applicable requirements of ERISA, the Code and other applicable Laws, and each Seller's Plan has been operated and administered in material accordance with its terms and with applicable Laws.

(b) To Sellers' Knowledge, the requirements of Part 6 of Subtitle I of ERISA and Code § 4980B and the regulations promulgated thereunder ("**COBRA**"), including, but not limited to, COBRA's notice and disclosure obligations to eligible employees, have been met in all material respects with respect to each Seller's Plan which is an "employee welfare benefit plan" (within the meaning set forth in ERISA § 3(1)) to the extent COBRA is applicable to such Seller's Plan. To Sellers' Knowledge, the requirements of ERISA §§ 701 and 702 ("**HIPAA**"), including, but not limited to, HIPAA's notice and disclosure obligations to eligible employees, have been met with respect to each Seller's Plan which is subject to HIPAA.

(c) None of Sellers or any ERISA Affiliate of any Seller is, or within the six (6) calendar year period preceding the Closing Date, ever has been, a participating employer in, or obligated to contribute to, or has incurred any liability to, a multiemployer plan (within the meaning set forth in ERISA §§ 3(37) and 4001(a)(3)) or an "employee pension benefit plan" (within the meaning set forth in ERISA § 3(2)) that is subject to the requirements of Section 412 of the Code or Title IV of ERISA.

(d) None of Sellers or any ERISA Affiliate of any Seller maintains, contributes to, or has, or ever has, incurred any liability under, any Employee Benefit Plan providing medical, health or life insurance or other welfare-type benefits for retired or terminated employees of the Business, currently or in the future, following their termination of service, their spouses, or their dependents (other than in accordance with COBRA).

3.19 Employees

(a) Each Seller has previously provided to Buyer a list containing the following information for each of its employees and independent contractors involved in the operation of the Business: employer; name; job title; current compensation paid or payable and any change in compensation since December 31, 2007. No Seller has violated the Worker Adjustment and Retraining Notification Act (the "**WARN Act**") or any similar state or local legal requirement.

(b) To Sellers' Knowledge, no officer, director, manager, member, agent, employee, consultant, or contractor of any Seller is bound by any Contract that purports to limit the ability of such officer, director, manager, member, agent, employee, consultant, or contractor (i) to engage in or continue or perform any conduct, activity, duties or practice relating to the Business, or (ii) to assign to such Seller or to any other

Person any rights to any invention, improvement, or discovery. No former or current employee of any Seller is a party to, or is otherwise bound by, any Contract with any Seller that in any way adversely affected, affects, or will affect the ability of such Seller or Buyer to conduct the Business as heretofore carried on by such Seller.

(c) No Seller is a party to any labor contract, collective bargaining agreement, Contract, letter of understanding, or any other arrangement, formal or informal, with any labor union or organization that obligates any Seller to compensate its employees at prevailing rates or union scale, nor are any of its employees represented by any labor union or organization. There is no pending or, to Sellers' Knowledge, threatened labor dispute, work stoppage, unfair labor practice complaint, strike, administrative or court proceeding or order between any Seller and any present or former employee(s) of any Seller. Except as set forth in Schedule 3.19(c), there is no pending or, to Sellers' Knowledge, threatened suit, action, investigation or claim between any Seller and any present or former employee(s) of any Seller. There has not been any labor union organizing activity at any location of any Seller with respect to any Seller's employees within the last five (5) years. Each Seller has complied in all material respects with immigration and naturalization laws in connection with the employment of its work force.

3.20 Intellectual Property Assets.

(a) Schedule 3.20(a) contains a complete and accurate list and summary description, including any royalties paid or received by each Seller, and each Seller has delivered to Buyer accurate and complete copies, of all Contracts relating to the Intellectual Property Assets, except for standard "shrink wrapped, off-the-shelf" or "click-wrap" software. There are no outstanding and, to Sellers' Knowledge, no threatened disputes or disagreements with respect to any such Contract.

(b) Except as set forth on Schedule 3.20(b), the Intellectual Property Assets are all those used in the operation of the Business as it is currently conducted. Except as set forth on Schedule 3.20(b), a Seller is the owner or licensee of all right, title and interest in and to each of the Intellectual Property Assets, free and clear of all Liens, and except as set forth on Schedule 3.20(b), has the right to use without payment to a third party all of the Intellectual Property Assets. No former or current employees of any Seller have executed written Contracts with such Seller that assign to such Seller all rights to any copyrights, inventions, improvements, discoveries or information relating to the Business

(c) Schedule 3.20(c) contains a complete and accurate list and summary description of all Marks and any actions that need to be taken with respect to such Marks within the thirty-six (36) month period following the Execution Date. Except as set forth on Schedule 3.20(c), all Marks have been registered with the United States Patent and Trademark Office. Except as set forth on Schedule 3.20(c), no Mark has been or is now involved in any opposition, invalidation or cancellation Proceeding and, to Sellers' Knowledge, no such action is threatened with respect to any of the Marks. Except as set forth on Schedule 3.20(c), to Sellers' Knowledge, there is no potentially interfering

trademark or trademark application of any other Person. Except as set forth on Schedule 3.20(c), no Mark has been infringed or, to Sellers' Knowledge, has been challenged or threatened in any way. Except as set forth on Schedule 3.20(c), to Sellers' Knowledge, none of the Marks used by any Seller infringes or has been alleged to infringe any trade name, trademark or service mark of any other Person. Except as set forth on Schedule 3.20(c), all products and materials containing a Mark bear the proper federal registration notice where permitted by law.

(d) Except as set forth on Schedule 3.20(d) or as otherwise provided in this sentence, each Seller has taken all precautions it deems necessary to protect the secrecy, confidentiality and value of all Trade Secrets (but no Seller has a policy requiring each employee or contractor to execute proprietary information or confidentiality agreements, nor have any current or former employees or contractors of any Seller executed such an agreement with any Seller). At no time has any Intellectual Property Asset been modified, customized, written, prepared or developed by any Person for the benefit of Sellers except under circumstances in which a Seller became the sole owner of, or retained full and complete ownership in such Intellectual Property Asset, and no Person, other than Sellers, has any claim of ownership in or rights of any kind with respect to such Intellectual Property Asset.

(e) Schedule 3.20(e) contains a complete and accurate list and summary description of all Net Names. All Net Names have been registered in the name of a Seller and are in compliance with all formal legal requirements. To Sellers' Knowledge, no Net Name has been or is now involved in any dispute, opposition, invalidation or cancellation Proceeding and, to Sellers' Knowledge, no such action is threatened with respect to any Net Name. No Net Name has been infringed or, to Sellers' Knowledge, has been challenged, interfered with or threatened in any way. To Sellers' Knowledge, no Net Name infringes, interferes with or is alleged to interfere with the trademark, copyright or domain name of any other Person.

(f) No Seller owns any Patents or registered copyrights.

(g) Except as set forth on Schedule 3.20(g), each Seller has at all times complied in all material respects with all applicable Laws, as well as its own rules, policies, and procedures relating to privacy, data protection, and the collection and use of personal information collected, used or held for use by such Seller in the conduct of the Business. As of the Execution Date, in the past three (3) years, no claims have been asserted or, to Sellers' Knowledge, threatened against any Seller alleging a violation of any Person's privacy or personal information or data rights and the consummation of the transactions contemplated hereby (including, without limitation, the transfer of such personal information) will not breach or otherwise cause any violation of any Laws, any Seller rule, policy or procedure related to privacy, data protection or the collection and use of personal information collected, used or held for use by such Seller in the conduct of the Business. Except as set forth on Schedule 3.20(g), each Seller has taken measures it deemed appropriate to ensure that such information is protected against unauthorized access, use, modification or other misuse.

3.21 Tax Matters.

(a) For purposes of this Agreement, (i) "**Tax**" and "**Taxes**" means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Code), customs, duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not, including any obligation to indemnify or otherwise assume or succeed to the Tax liability of any other Person, and (ii) "**Tax Return**" means any return, report, information return or other document (including any related or supporting information) filed or required to be filed with any taxing authority in connection with its determination, assessment, collection, administration or imposition of any Tax.

(b) Each Seller and Parent, as applicable, has duly filed or caused to be filed all Tax Returns that are or were required to be filed by it, all such Tax Returns were true, correct and complete in all material respects and where prepared in compliance with all applicable laws and regulations. Each Seller and Parent, as applicable, has duly and timely paid all Taxes due from it to federal, foreign, state or local taxing authorities. There are no Tax liens upon any of the Assets other than liens for Taxes not yet due and payable and liens that a Seller or Parent is contesting in good faith (as set forth on Schedule 3.21), and there are no pending written claims for or, to Sellers' Knowledge, threatened audits or examinations relating to Taxes or assessments against any Seller or Parent. No Seller has requested or been granted any extension of the limitation period applicable to any claim for Taxes or assessments with respect to Taxes. No Seller is currently the beneficiary of any extension of time within which to file any Tax Return.

(c) Each Seller has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, director, officer, manager, member or third party.

(d) Schedule 3.21 lists each jurisdiction in which each Seller has filed Tax Returns for each period or portion thereof for the last seven (7) fiscal years of such Seller ending on or before the Closing Date.

(e) Other than as disclosed in Schedule 3.21: (i) no such Tax Return has been audited, and no such Tax Return is currently the subject of audit; (ii) there is no written Tax claim outstanding against any Seller; and (iii) no claim in writing has ever been made against any Seller by any taxing authority in a jurisdiction where such Seller does not file Tax Returns that it may be subject to taxation by that jurisdiction.

(f) No Seller has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(g) None of the Assumed Liabilities is an obligation to make a payment that is not deductible under Code §280G.

3.22 Environmental Matters. Except as set forth on Schedule 3.22.

(a) No Seller has authorized or conducted, or has any Knowledge of, the generation, transportation, storage, presence, use, treatment, disposal, release or handling of any Hazardous Materials on, in, or under the Premises, except for the generation, transportation, storage, presence, use, treatment, disposal, release or handling of Hazardous Materials in ordinary quantities which typically and necessarily are used or stored in conjunction with the operation of a transportation business similar to the Business so long as such generation, transportation, storage, presence, use, treatment, disposal, release or handling is in material compliance with applicable Environmental Laws.

(b) To Sellers' Knowledge, each Seller is in material compliance with all Environmental Laws.

(c) To Sellers' Knowledge, each Seller has been and is in material compliance with, all licenses, permits, registrations, and government authorizations necessary to operate the Business and the Premises under all applicable Environmental Laws.

(d) No Seller has received any written notice from any governmental entity or any other Person and there is no pending or, to Sellers' Knowledge, threatened claim, litigation or any administrative agency proceeding that: alleges a violation of any Environmental Law by any Seller; alleges any Seller is a liable party or a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, or any state superfund law, has resulted in or would reasonably be expected to result in the attachment of an environmental lien on the Premises; or alleges the occurrence of contamination of the Premises, damage to natural resources, property damage or personal injury based on its activities at the Premises involving Hazardous Materials, whether arising under the Environmental Laws, common law principles or other legal standards; and, to Sellers' Knowledge, the Premises do not contain lead paint or any asbestos containing material

(e) From and after the Execution Date, no Seller shall maintain, allow, place, deposit, leave, release or store in, on or about the Premises, any Hazardous Material, in violation of any Environmental Law or that would reasonably be expected to give rise to any condition which is in violation of any Environmental Law or health and safety Laws. For purposes of this Section 3.22(e), the presence, storage, use and handling as allowed by and in compliance with Environmental Laws of Hazardous Materials, as part of Sellers' day-to-day operations of the Premises shall not constitute conditions that would reasonably be expected to give rise to any condition which is in violation of any Environment Law or health or safety Laws.

3.23 Insurance.

(a) Each Seller has delivered to Buyer true and complete copies of all policies of insurance to which such Seller is a party or under which such Seller, or any manager, member, employee or other agent of such Seller, is or has been covered at any time within the five (5) years preceding the Execution Date that relate to the operations of the Business. Notwithstanding anything to the contrary in the immediately preceding sentence, with respect to any policy of insurance that is in the name of any Person other than solely a Seller, Buyer acknowledges and agrees that each Seller's delivery requirement with respect to such policy described in the immediately preceding sentence shall be deemed satisfied by delivery of the declaration page relating to such policy.

(b) Schedule 3.23 describes with respect to each Seller to the extent that the information relates to the operation of the Business:

(i) any self-insurance arrangement by or affecting such Seller, including any reserves established thereunder;

(ii) any Contract or arrangement, other than a policy of insurance, for the transfer or sharing of any risk by such Seller; and

(iii) all obligations of such Seller to third parties with respect to insurance (including obligations under leases and service agreements), to the extent not set forth in the express terms of the Material Contracts, and identifies the policy under which such coverage is provided.

(c) Except as set forth on Schedule 3.23:

(i) All policies to which each Seller is a party or that provide coverage to a Seller or any manager, member, employee or other agent of such Seller that relate to the operations of the Business: (A) are, to Seller's Knowledge, valid, outstanding, and enforceable; and (B) are sufficient for compliance with all Laws and any relevant express provisions of Contracts to which such Seller is a party or by which it is bound.

(ii) No Seller has, since January 1, 2003, received (A) any refusal of coverage or any notice that a defense will be afforded with reservation of rights, or (B) any notice of cancellation or any other indication that any insurance policy that relates to the operations of the Business is no longer in full force or effect or will not be renewed or that the issuer of any such policy is not willing or able to perform its obligations thereunder.

(iii) Each Seller has paid all premiums due prior to the date hereof, and has otherwise performed all of its obligations, under each policy to which such Seller is a party or that provides coverage to such Seller or any manager, member, employee or other agent of such Seller that relates to the operations of the Business.

(iv) Each Seller has given notice to the insurer of all material claims that may be insured thereby

3.24 Related Agreements. Except as set forth on Schedule 3.24, there are no agreements or arrangements between (a) a Seller, on the one hand, and (b) any Parents, any members or shareholders of any Parents, any other Sellers or any Affiliates of Sellers or Parents, on the other hand.

3.25 Motor Vehicles. Schedule 3.25 sets forth a complete and accurate list of all vehicles utilized in the Business, whether owned or leased (and if leased the lessor thereof), the type of vehicle and vehicle identification number. All such vehicles are properly licensed and registered in accordance with applicable laws.

3.26 Competitive Activities. Except as set forth in Schedule 3.26, to Sellers' Knowledge, there are no ongoing or planned activities of any third party that competes or plans to compete with Sellers that would reasonably be expected to result in a Material Adverse Change (excluding the commencement of business by transportation operators with less than five (5) vans or the expansion of the business of a transportation operator provided such expansion does not increase the number of vans used by such operator to more than five (5) vans).

3.27 Disclosure. The representations and warranties made by Sellers and Parents in Article III of this Agreement, including in the Disclosure Schedules, taken as a whole, do not contain any untrue statement of a material fact, or omit to state any material fact required to make the statements contained therein, in light of the circumstances in which such statements are made, not misleading.

3.28 Representations and Warranties Exclusive. BUYER ACKNOWLEDGES AND AGREES THAT THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE III, THE DISCLOSURE SCHEDULES, AND ANY OTHER ACQUISITION DOCUMENT EXECUTED BY SELLERS, BUT ONLY TO THE EXTENT THAT SUCH ACQUISITION DOCUMENT CLEARLY AND UNAMBIGUOUSLY CONTAINS REPRESENTATIONS AND WARRANTIES, ARE THE EXCLUSIVE REPRESENTATIONS AND WARRANTIES MADE BY SELLERS AND PARENTS WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, AND EACH SELLER AND PARENT HEREBY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY OTHER KIND OR NATURE, AND BUYER ACKNOWLEDGES AND AGREES WITH THE FOREGOING.

3.29 Definition of Knowledge. For purposes of this Agreement, Sellers will be deemed to have "Knowledge" of a particular fact or matter (a) on or prior to the Execution Date, if any, of Harry H. Frampton, III, Charles I. Madison, Craig A. Ferraro, Jay R. Ufer or Brian Seidel is actually aware of that fact or matter after review of Article III of this Agreement; and (b) after the Execution Date, if any of Harry H. Frampton, III, Charles I. Madison, Craig A. Ferraro, Jay R. Ufer, Brian Seidel, Thomas S. Ball, Tony Clement, Paul Golden or Jeffrey E. Lehman (i) is actually aware of that fact or matter after review of Article III of this Agreement, or (ii) knew of that fact or matter after reasonable inquiry of the supervisory and management

level employees with respect to the matters that are the subject of this Article III, and Sellers agree to make such reasonable inquiries of the Persons named and otherwise referred to herein. The Persons listed in this Section 3.29 shall be deemed to be actually aware of any fact or matter set forth in any physical or electronic document (whether or not deleted) in their possession or in the possession of any Seller.

3.30 Sellers' Disclosures Required by Law.

(a) **Special Taxing Districts.** SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

(b) **Source of Potable Water (applicable to Residential Land and Residential Improvements Only).** The water provider for the Real Property may be contacted as set forth in Schedule 3.30(b).

SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.

(c) **Methamphetamine Laboratory Disclosure (Residential Property Only)**
The parties acknowledge that Sellers are required to disclose whether Sellers know that the Real Property, if residential, was previously used as a methamphetamine laboratory. No disclosure is required if the Real Property was remediated in accordance with state standards and other requirements are fulfilled pursuant to Colo. Rev. Stat. § 25-18.5-102. Buyer further acknowledges that Buyer has the right to engage a certified hygienist or industrial hygienist to test whether any portion of the Real Property used for residential purposes has ever been used as a methamphetamine laboratory. If Buyer's test results indicate that such Real Property has been used as a methamphetamine laboratory, but has not been remediated to meet the standards established by rules of the State Board of Health promulgated pursuant to Colo. Rev. Stat. § 25-18.5-102, Buyer shall promptly give written notice to Seller of the results of the test, and Buyer may terminate this Agreement.

(d) **Regarding Real Property in a Common Interest Community.** Pursuant to Colo. Rev. Stat. § 38-35.7-102:

Buyer hereby acknowledges that Buyer has received copies of the declaration, covenants, bylaws, and rules and regulations of the homeowners' association of the Terrace Condominiums Homeowners Association, Inc., in which portions of the Real Property are located, and Buyer understands that these documents constitute an agreement between the Association and the Buyer. By signing this statement, Buyer acknowledges that Buyer has read and understands the association's declaration, covenants, bylaws, and rules and regulations. Buyer also understands that by completing this purchase, Buyer is responsible for paying assessments to the association. If Buyer does not pay these assessments, the association could place a lien on the Real Property in question and possibly sell it to collect the debt. Buyer also understands that any change to the exterior of the Real Property in question may be subject to architectural review and approval. Failure to secure such review and approval could be a violation of the declaration and could result in remedial action being taken by the association.

(e) Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards.

WARNING! LEAD FROM PAINT, DUST, AND SOIL CAN BE DANGEROUS IF NOT MANAGED PROPERLY

Penalties for failure to comply with Federal Lead-Based Paint Disclosure Laws include treble (3 times) damages, attorney fees, costs, and a penalty up to \$10,000 (plus adjustment for inflation) for each violation.

(i) Lead Warning Statement. Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

(ii) Sellers' Disclosure to Buyer and Real Estate Licensee(s) and Acknowledgment.

(A) Sellers acknowledge that Sellers have been informed of Sellers' obligations. Sellers are aware that Sellers must retain a copy of this disclosure for not less than three years from the completion date of the sale.

(B) Sellers have no knowledge of any lead-based paint and/or lead-based paint hazards present in the housing that is part of the Real Property

(C) Sellers have no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing that is part of the Real Property.

(D) By signing this Agreement, Sellers certify as of the Execution Date that the statements made by Sellers in this part (ii) above are accurate to best of Sellers' knowledge.

(iii) Buyer's Acknowledgment.

(A) Buyer has read the Lead Warning Statement above and understands its contents

(B) Buyer has received copies of all information, including any records and reports listed by Seller above.

(C) Buyer has received the pamphlet "Protect Your Family From Lead in Your Home "

(D) Buyer acknowledges federal law requires that before a buyer is obligated under any contract to buy and sell real estate. Sellers shall permit Buyer a 10-day period (unless the parties mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

(E) Buyer, after having reviewed the contents of this form, and any records and reports listed by Seller, has elected to (check one box below):

- ☐ Obtain a risk assessment or an inspection of the Real Property for the presence of lead-based paint and/or lead-based paint hazards, within the time limit and under the terms of this Agreement, or
- ☐ Waive the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Sellers and Parents as follows:

4.1 Organization and Good Standing. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Colorado, with all corporate power and authority to own its properties, carry on its business as presently conducted and to perform

its obligations hereunder and under the Acquisition Documents to which it is a party, including the ability to satisfy the Assumed Liabilities.

4.2 Enforceability and Authority.

(a) Buyer has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Acquisition Documents to which it is a party and to perform its obligations under this Agreement and such Acquisition Documents, and such action has been duly authorized by all necessary action by Buyer.

(b) This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms. Upon the execution and delivery by Buyer of the Acquisition Documents to which it is a party, each of such Acquisition Documents will constitute the legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms.

4.3 No Conflict. Neither the execution and delivery of this Agreement and the Acquisition Documents to which Buyer is a party by Buyer nor the consummation or performance of any of the transactions by Buyer described in and contemplated hereby and thereby will violate any Laws to which Buyer is subject or give any Person the right to prevent, delay or otherwise interfere with the execution, delivery or performance of this Agreement, the Acquisition Documents to which Buyer is a party or any of the transactions contemplated hereby or thereby pursuant to (a) any provision of Buyer's certificate of incorporation or bylaws; (b) any resolution adopted by the directors and shareholders of Buyer; (c) any judgment, order, writ or decree of any court or administrative body applicable to Buyer; or (d) any material contract to which Buyer is a party or by which Buyer may be bound.

4.4 No Action. There is no Proceeding or, to Buyer's Knowledge, an investigation that has been commenced against Buyer that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, this Agreement or the Acquisition Documents to which Buyer is a party or any of the transactions contemplated hereby or thereby. To Buyer's Knowledge, no such Proceeding has been threatened.

4.5 No Brokers. Buyer has not entered into any contract, arrangement or understanding with any Person that may result in the obligation of Sellers, Parents or Buyer to pay any finder's fees, brokerage or agent's commissions or other like payments in connection with the negotiations leading to this Agreement or the Acquisition Documents to which Buyer is a party or the consummation of the transactions contemplated hereby or thereby.

4.6 Definition of Knowledge. For purposes of this Agreement, Buyer will be deemed to have "**Knowledge**" of a particular fact or matter if (a) either Jeffrey Jones or Chris Chang is actually aware of that fact or matter; or (b) a prudent individual could be expected to discover or otherwise become aware of a fact or matter in the course of conducting a reasonably comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement.

ARTICLE V

PRE-CLOSING COVENANTS

5.1 **Due Diligence Review.** Buyer shall have the right during the Due Diligence Period to perform additional due diligence, including, without limitation, Phase I environmental assessments on all Real Property. In the event that, in Buyer's sole discretion, a Phase I assessment raises concerns with respect to the subject Real Property, within five (5) Business Days after receiving the Phase I report, Buyer may request that a Phase II environmental assessment be promptly performed on such Real Property. Prior to the Pre-Closing Date, Buyer and Sellers shall attempt, in good faith, to negotiate a Remediation Agreement (the "**Remediation Agreement**") pursuant to which Sellers shall agree to retain (subject to **Section 8.5**) all liability with respect to any remediation or other clean-up of any Hazardous Materials that are revealed to be present on the Identified Locations or any other Real Property by a Phase I or Phase II assessment (the "**Specified Environmental Obligations**") and conduct, or cause to be conducted, such remediation and/or clean-up pursuant to the requirements set forth in the Remediation Agreement which requirements shall be as agreed upon by the parties in the Remediation Agreement but not be less than those required by applicable Environmental Law. The cost of remediation shall include the Losses incurred by Buyer due to any material disruption to the Business caused by the remediation and/or the costs incurred by Buyer in relocating the operations of the Business in the event that the use of the property shall be materially and substantially impaired by the remediation. In the event that Sellers and Buyer are not able to agree upon the terms of a Remediation Agreement prior to the end of the Approval Period, (A) if the aggregate costs to remediate the Specified Environmental Obligations to the level required by applicable government authorities exceeds \$2,500,000 (the "**Environmental Clean-Up Threshold**"), Sellers can terminate this Agreement without further liability to Buyer, or (B) if such costs are less than such amount, Buyer and Seller will first engage a mediator to facilitate the negotiation of a Remediation Agreement and if, after thirty (30) days, Buyer and Seller are still unable to reach an agreement with respect to a Remediation Agreement, Buyer and Seller will submit to binding arbitration to facilitate the negotiation of a Remediation Agreement; provided, however, that in the event such arbitrator shall impose upon Sellers an obligation to spend, in the aggregate, more than, or that could be reasonably expected to result in Sellers being required to spend, in the aggregate more than, the Environmental Clean-Up Threshold, Sellers may terminate this Agreement and the ruling of such arbitrator shall be vacated.

5.2 **Access to Information.** From the Execution Date until the Closing Date, each Seller will permit Buyer to make a full and complete investigation of the Business and the Assets, at reasonable times and following reasonable notice, and to receive from each Seller all information relating to the Business and the Assets, or reasonably related to the conduct of the Business, provided, however, that such investigation by Buyer shall be conducted under the supervision of Sellers' personnel and in such a manner as to maintain the confidentiality of the transactions contemplated by this Agreement and shall not unreasonably interfere with the business operations of Sellers.

5.3 Third Party Consents Approvals and Lien Releases.

(a) Each party shall use its Commercially Reasonable Efforts to obtain the STB Approval (the "**Transport Approval**") and the PUC Order, within one hundred eighty (180) days following the Execution Date (the "**Approval Period**"); provided, however, that if the Transport Approval and the PUC Order are not obtained within the Approval Period, Buyer may have the option, in its sole and absolute discretion, to extend the Approval Period for an additional period not to exceed one hundred twenty (120) days, which option shall be exercised by Notice given to Sellers prior to the expiration of the initial one hundred twenty (120) day Approval Period, provided, however, that in no event shall the Approval Period (regardless of whether extended pursuant to this **Section 5.3(a)** or pursuant to **5.3(b)**) extend beyond three hundred (300) days following the Execution Date. In the event of such extension, each party shall continue to use its Commercially Reasonable Efforts to obtain the Transport Approval and the PUC Order. Unless otherwise agreed by the parties, (i) upon receipt of the STB Approval, Buyer shall file with the PUC a petition to take notice of the STB Approval and to update its records accordingly (which petition shall be in form and substance satisfactory to counsel to Buyer and counsel to Sellers on PUC matters), and (ii) Buyer shall not, prior to Closing, make any filing with the PUC requesting approval by the PUC of the transactions contemplated by this Agreement or otherwise submitting such transactions to the jurisdiction of the PUC. Buyer and Sellers will reasonably cooperate with each other with respect to all procedural matters before the PUC.

(b) Each party shall use its Commercially Reasonable Efforts to obtain within the Approval Period any Consent or Approval related to the DIA Concession Agreement (the "**DIA Consent**") and the Eagle County Airport Concession Agreement (the "**Eagle Consent**") and together with the DIA Consent, the "**Airport Consents**"); provided, however, that if the Airport Consents are not obtained within the Approval Period, Buyer may have the option, in its sole and absolute discretion, to extend the Approval Period for an additional period not to exceed one hundred twenty (120) days, which option shall be exercised by notice given to Sellers prior to the expiration of the initial one hundred twenty (120) day Approval Period. In the event of such extension, each party shall continue to use its Commercially Reasonable Efforts to obtain the Airport Consents.

(c) Each party shall use its Commercially Reasonable Efforts to obtain on or before the Pre-Closing Date, any and all Consents and Approvals (other than the Transport Approval, the PUC Order and the Airport Consents) necessary to consummate the transactions contemplated by this Agreement and the Acquisition Documents to which it is a party, including, without limitation, all Consents and Approvals listed on **Schedules 3.16 and 3.17.**

(d) Each Seller shall use its Commercially Reasonable Efforts to obtain on or prior to the Closing, releases for any and all Liens upon the Assets, including, without limitation, the Liens listed on **Schedules 3.6(a) and 3.6(b)**, and to buy-out or otherwise prepay the Retired Indebtedness.

(e) Sellers and Parents shall use Commercially Reasonable Efforts to cause the ES Lease Agreement and Supply Agreement to be executed by ES.

(f) For the purposes of this Agreement, "Commercially Reasonable Efforts" will require that a Person use all efforts standard for the transportation industry to achieve the specified result, but shall not require such Person to incur any expense or pay any amount other than paying normal and usual filing and processing fees.

5.4 Certain Notifications. Between the Execution Date and the Closing, Sellers and Parents shall promptly notify Buyer in writing if any of the Persons named in Section 3.29 becomes actually aware of (a) any fact or condition that causes or constitutes a breach of any of Sellers' or Parents' representations and warranties contained in this Agreement made as of the Execution Date or the Pre-Closing Date or (b) the occurrence between the Execution Date and the Closing Date of any fact or condition which if any of the Persons named in Section 3.29 are actually aware, with the passage of time, (except as expressly contemplated by this Agreement) would cause or constitute a breach of any such representation or warranty had that representation or warranty been made as of the time of the occurrence of, or such Person's discovery of, such fact or condition. Should any such fact or condition require any change to the Disclosure Schedules, Sellers and Parents shall promptly deliver to Buyer a supplement to the Disclosure Schedules specifying such change. During the same period, Sellers and Parents also shall promptly notify Buyer of the occurrence of any breach of any covenant of Sellers or Parents in this Article V or of the occurrence of any event of which any of the Persons named in Section 3.29 becomes actually aware that may make the satisfaction of the conditions in Article VI impossible or unlikely. Buyer shall promptly notify Sellers and Parents in writing of the occurrence of any fact or condition which, with the passage of time, would cause or constitute failure of Buyer to satisfy any of the conditions specified in Article VII.

5.5 Conduct of the Business Prior to Closing. From the Execution Date to the Effective Time, each Seller shall conduct, and Parents shall and shall cause each Seller to conduct, the Business in the ordinary and usual course, consistent with past practice, and will use their Commercially Reasonable Efforts to maintain the Assets, to preserve intact all rights, privileges, franchises and other authority of the Business, to retain, manage, supervise and discipline employees, and to maintain favorable relationships with licensors, licensees, referral sources, suppliers, contractors, distributors, customers, vendors and others having relationships with the Business. From the Execution Date through the Effective Date, Sellers and Parents will cause the senior management of Sellers to, periodically (but no less than weekly, or such other period as Buyer and the senior management of Sellers agree upon) report to, confer with and seek the advice of Buyer and Buyer Affiliates regarding day-to-day operations and performance of the Business. Without limiting the generality of the foregoing, prior to the Closing, and except as approved in writing by Buyer in advance (which approval or denial shall not be unreasonably delayed) or as set forth in the Capex Schedule, each Seller:

(a) shall seek Buyer's consent for any material business decision (including, without limitation, setting Sellers' prices for the 2008/2009 season) other than non-material ordinary course decisions made by the senior management of Sellers consistent with the past practices of Sellers (except to the extent otherwise prohibited by this Section 5.5);

(b) shall not change its organizational documents and constituent documents or capitalization or merge or consolidate with or into or otherwise acquire any interest in any entity;

(c) shall not declare, set aside, make or pay any cash dividend or other distribution to its members or any redemption, retirement or purchase with respect to its Equity Interests, except for (i) tax distributions to Parents, (ii) such other distributions to Parents as may be made without adversely affecting normalized working capital, and (iii) distributions to other Sellers;

(d) shall not issue any additional Equity Interests or rights, warranty or options or agreements to acquire Equity Interests,

(e) will not authorize, guarantee or incur any long-term indebtedness or loan funds to any Person;

(f) will not institute, settle or agree to settle any litigation, action or proceeding before any court or governmental body, except Buyer's approval shall not be required for the settlement of any litigation, action, proceeding or other matter as long as the settlement consideration from Sellers or their insurers involves only cash and the amount of such cash settlement to be paid by Sellers does not exceed Sellers' available cash reserves;

(g) will not mortgage, pledge or subject to any Lien any, tangible or intangible, property or assets;

(h) will not sell, lease or otherwise dispose of any property or assets, tangible or intangible, other than the sale of up to a total of sixty (60) of Sellers oldest vehicles since December 31, 2007 listed in section (c) of Schedule 3.12 in the ordinary course of business consistent with past practice and the disposal of immaterial broken or obsolete assets (other than the transfer of a total of seven (7) of such sixty (60) vehicles, one to each Key Management Employee and one (1) to each of two other significant employees if the Closing occurs and such Key Management Employee, or other significant employee, as applicable, becomes an employee of Buyer at the Closing);

(i) will not (i) authorize any compensation increases or decreases of any kind whatsoever for any employee, other than compensation increases to non-management employees made in the ordinary course of business consistent with past practice, (ii) adopt or amend any severance plan or other Employee Benefit Plan except for amendments necessary to preserve the tax qualified status of such Employee Benefit Plan, (iii) enter into any employment agreement with any employee other than oral at-will employment agreements with hourly employees in the ordinary course of business consistent with past practice, (iv) hire any employees, other than hiring at-will hourly employees in the ordinary course of business consistent with past practice (Sellers agree to deliver a list of any at-will hourly employees hired after the Pre-Closing Date no less than twenty-one (21) days prior to Closing (the "New Hires"), or (v) terminate the

employment of any employee, except for terminations of hourly employees in the ordinary course of business consistent with past practice:

(j) will maintain staffing levels consistent with the ordinary course of business and past practice;

(k) will not make any new elections with respect to Taxes, or any changes in current elections with respect to Taxes;

(l) will maintain insurance coverage consistent with past practice;

(m) will not violate, cancel, amend or otherwise change in any material way the terms of any Assumed Contract;

(n) will not enter into or otherwise agree to a Contract or commitment, except for vehicle subleases (with a Seller acting as the sublessor) for portions of the summer season in the ordinary course of business consistent with past practice;

(o) will comply in all material respects with all Laws applicable to the Business;

(p) will not commit to expend any capital expenditure funds except for expenditures listed in the Capex Schedule;

(q) will not modify any pricing or materially change its vehicle maintenance schedules, or advertising and marketing expenditures or plans;

(r) will not pay the 2008 Bonuses except pursuant to the terms hereof;

(s) will pay and recognize all accounts receivable and accounts payable in a manner consistent with past practice as reflected in such Sellers' books and records, including, but not limited to, the Audited Financial Statements and Interim Financial Statements; and will not accelerate the recognition, payment or collection, as applicable, of any accounts receivable or accounts payable;

(t) will perform routine repair and maintenance on all vehicles consistent with the ordinary course of business and past practice;

(u) will not purchase or make any further commitments with respect to the purchase of the Vail Daily Lot;

(v) will not issue Marketing Certificates or Credits except in the ordinary course of business consistent with past practice and provided that the aggregate cost for such Marketing Certificates or Credits issued after the Execution Date does not exceed Seventy-Five Thousand Dollars (\$75,000.00); and

(w) will not agree to do any of the foregoing.

5.6 Filings. Each of Buyer, Sellers and Parents will promptly file or submit and diligently prosecute any and all applications or notices with public authorities, federal, state or local, domestic or foreign, and all other requests for approvals of any private persons, the filing or granting of which are necessary or appropriate, or are reasonably deemed necessary or appropriate by any party, for the consummation of the transactions contemplated hereby and by the Acquisition Documents.

5.7 No Negotiation. Until such time as this Agreement shall be terminated pursuant to Article X and for a period of ninety (90) days thereafter, none of Sellers or Parents shall, directly or indirectly, solicit, initiate, encourage, entertain, or consider the merits of any inquiries or proposals from, discuss or negotiate with, provide any nonpublic information to or consider the merits of any inquiries or proposals from any Person (other than Buyer) relating to any business combination transaction involving any Seller, including the sale by Parents of the Equity Interests (or any portion thereof), the merger or consolidation of any Seller or the sale of the Business or any of the Assets (other than the sale of Assets made in the ordinary course of business consistent with past practice).

5.8 Pre-Closing Actions. Between the Execution Date and continuing until the Closing, the parties hereto shall not take any action that would reasonably be expected to cause the conditions upon the obligations of the parties to effect the transactions contemplated hereby or by the Acquisition Documents to which such party is a party not to be fulfilled including, without limitation, taking, causing to be taken or permitting or suffering to be taken or to exist any action, condition or thing that would reasonably be expected to cause the representations and warranties made by them herein not to be true, correct, complete and accurate in all material respects as of the Pre-Closing Date or the Closing Date.

5.9 Employees.

(a) On or prior to the Pre-Closing Date, Buyer will deliver to Sellers a list of employees Buyer intends to hire immediately after the Closing plus any New Hires approved by Buyer no later than ten (10) days before Closing (the "Continuing Employees"). Immediately upon the Closing but effective as of the Effective Time, Sellers shall terminate all employment agreements it has with and shall terminate its employment of the Continuing Employees.

(b) Buyer and Sellers agree that each Continuing Employee has a nonforfeitable right to their Accrued PTO. Buyer hereby acknowledges and agrees that Buyer shall be responsible for the payment of all Accrued PTO due to any Continuing Employee that executes and delivers to Buyer an Accrued PTO benefits election form attached as Exhibit A (the "PTO Election Form") no later than two (2) Business Days prior to the Closing Date (the "PTO Election Date"). Buyer will not be obligated to assume and Sellers will retain all liability with respect to any Accrued PTO of Continuing Employees that fail to deliver an executed PTO Election Form on or before the PTO Election Date.

(c) Buyer agrees to pay to any Person that it hires as a seasonal employee for the 2008/09 ski season who was a seasonal employee of Sellers for the 2007/08 ski

season, a bonus equivalent to the bonus that such Person would have received had such Person been hired by Sellers as a seasonal employee under the terms and conditions of Sellers' bonus plans described on Schedule 5.9(c) consistent with the historical practices of Sellers as reflected in the Audited Financial Statements; provided, however, that Buyer shall have full discretion with respect to the timing of any bonus payment and shall not be required to make any payments that would violate applicable law.

5.10 Member Approval. Each Parent hereby agrees to, and agrees to use its best efforts to cause all the members or shareholders, as the case may be, of each Parent to, consent to and vote in favor of the execution and delivery of this Agreement and the Acquisition Documents to which Sellers and Parents are a party and the performance of the obligations of each Seller and Parent hereunder and thereunder.

5.11 Current Evidence of Title.

(a) As soon as is reasonably possible, and in no event later than seven (7) days after the Execution Date, Sellers shall furnish to Buyer any existing surveys of the Owned Real Property to the extent in the possession of Sellers or Parents (each, a "Survey") and, at Sellers' expense, for each parcel, tract or subdivided land lot of Owned Real Property from Land Title Guaranty Company (the "Title Insurer"):

(i) title commitments issued by the Title Insurer to insure title to all Land, Improvements, and insurable Appurtenances, if any, in the amount of that portion of the Purchase Price allocated to the Owned Real Property covering such Owned Real Property, naming Buyer as the proposed insured and having an effective date after the Execution Date, wherein the Title Insurer shall agree to issue an ALTA 1992 form owner's policy of title insurance (each a "Title Commitment"); and

(ii) complete and legible copies (to the extent available from the public records or in the possession of Sellers or Parents) of all recorded documents listed as Schedule B-1 matters to be terminated or satisfied in order to issue the policy described in the Title Commitment or as special Schedule B-2 exceptions thereunder (the "Recorded Documents")

(b) Each Title Commitment shall include the Title Insurer's requirements for issuing its title policy, which requirements shall be met by Sellers on or before the Closing Date (including those requirements that must be met by releasing or satisfying monetary Liens, but excluding Permitted Encumbrances and those requirements that are to be met solely by Buyer).

(c) Within fourteen (14) days after receiving all of the Title Commitments, Surveys and copies of Recorded Documents, Buyer shall notify Sellers in writing of any objection Buyer may have to any exceptions in the Title Commitment (collectively, the "Title Objection").

(d) Sellers shall use their commercially reasonable efforts to cure each Title Objection and take all steps required by the Title Insurer to eliminate each Title Objection

as an exception to the Title Commitment before the end of the Due Diligence Period. If Sellers fail to cure the Title Objections prior to the end of the Due Diligence Period, then Buyer may elect to terminate this Agreement or waive any exception to the Title Commitment. Such waived exceptions, together with any title exceptions or matters disclosed by the Surveys but not objected to by Buyer shall be deemed "**Permitted Real Estate Encumbrances**".

(e) Nothing herein waives Buyer's right to claim a breach of Section 3.15 or to claim a right to indemnification as provided in Article VIII if Buyer suffers any Losses as a result of a misrepresentation with respect to the condition of title to the Owned Real Property.

5.12 **Payment of Bonuses.** On the earlier to occur of (i) any date within fifteen (15) days prior to the Closing Date but no earlier than such date, or (ii) October 15, 2008, Sellers shall pay all 2008 Bonuses.

5.13 **Working Visas.** From the Execution Date to the Effective Time, each Seller agrees to proceed in the ordinary course of business consistent with past practices with the filing of certifications and petitions necessary for all non-immigrant working visas, including H-2B visas ("**Working Visas**"). Sellers shall deliver to Buyer, no less than five (5) Business Days prior to the Pre-Closing Date, a list of Persons for whom Sellers, at such time, reasonably expect to seek Working Visas (the "**Working Visas List**"). If Sellers intend to submit any document with any governmental authority with respect to any Working Visas for Persons not listed on the Working Visas List, Sellers shall update the Working Visas List by adding such Person at least three (3) Business Days prior to making such submission.

5.14 **Awareness of Competitive Activities.** From the Execution Date to the Closing Date Sellers or Parents shall notify Buyer within forty-eight (48) hours if any of the Persons named in Section 3.29 becoming actually aware of any Competitive Business that would reasonably be expected to result in a Material Adverse Change and provide Buyer with any information that Sellers or Parents have on such competitive activities (excluding any activities disclosed in Schedule 3.26, and the commencement of business by transportation operators with less than five (5) vans or the expansion of the business of a transportation operator provided such expansion does not increase the number of vans used by such operator to more than five (5) vans).

5.15 **Awareness of Pending Laws.** From the Execution Date to the Closing Date, Sellers or Parents shall notify Buyer within forty-eight (48) hours of any of the Persons listed in Section 3.29 becoming actually aware of any pending Laws (including Transportation Laws), not already disclosed on Schedule 3.13(d), that if enacted would reasonably be expected to result in a Material Adverse Change and provide Buyer with any information that Sellers or Parents have on such pending Laws (including Transportation Laws) except to the extent such Laws are described on Schedule 3.13(d). For purposes of this Section 5.15, a Law or amendment shall be pending if such Law or amendment has been officially and publicly announced by a governmental entity.

5.16 Vail Daily Lot. Sellers agree not to purchase the Vail Daily Lot or to make any further commitments with respect to the purchase of the Vail Daily Lot without Buyer's written consent. In the event that Sellers purchase or make further commitments with respect to the purchase of the Vail Daily Lot without Buyer's consent, Buyer will have the option at Closing to refuse to purchase the Vail Daily Lot and the Purchase Price shall not be adjusted by the Vail Daily Lot Amount.

ARTICLE VI

CONDITIONS TO OBLIGATIONS OF BUYER

Unless waived, in whole or in part, in writing by Buyer, the obligations of Buyer to effect the transactions contemplated by this Agreement or the Acquisition Documents to which Buyer is a party shall be subject to the satisfaction at or prior to the Closing of each of the following conditions (the "**Buyer's Closing Conditions**"):

6.1 Representations and Warranties of Sellers and Parents to be True.

(a) All of Sellers' and Parents' representations and warranties in this Agreement (considered collectively) and each of these representations and warranties (considered individually), shall have been accurate in all material respects as of the Execution Date and the Pre-Closing Date, and shall be accurate in all material respects as of the time of the Closing as if then made without giving effect to any supplement to the Disclosure Schedules.

(b) Each of the representations and warranties set forth in Sections 3.2(a), 3.2(b) and 3.4 and each of the representations and warranties in this Agreement that contains an express materiality qualification, shall have been accurate in all respects as of the Execution Date and the Pre-Closing Date, and shall be accurate in all respects as of the time of the Closing as if then made without giving effect to any supplement to the Disclosure Schedules.

6.2 Sellers' and Parents' Performance. All of the covenants and obligations that Sellers or Parents are required to perform or to comply with pursuant to this Agreement and the Acquisition Documents to which Sellers and Parents are a party at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been duly performed and complied with in all respects.

6.3 No Proceedings. No Proceeding or investigation pertaining to the transactions contemplated by this Agreement or any Acquisition Document or to the consummation of the transactions contemplated by this Agreement or any Acquisition Document shall have been instituted or threatened on or prior to the Closing Date.

6.4 No Material Adverse Condition. Since the date of the most recent Audited Financial Statements, there shall not have been any Material Adverse Change. Since the Execution Date, no material adverse change to Parents' ability to consummate the transactions contemplated hereby or by the Acquisition Documents shall have occurred. Not more than ten percent (10%) of the Continuing Employees identified by Buyer as of the Pre-Closing Date have resigned their employment with Sellers on or prior to the Closing Date (excluding any

Continuing Employees who have been replaced with New Hires satisfactory to Buyer). No Key Management Employees have resigned their employment with Sellers, or announced that they will not honor the Employment Agreements held in escrow by the Escrow Agent or will otherwise not agree to be employees of Buyer after the Closing. ES shall not have Breached the ES Lease Agreement or the Supply Agreement.

6.5 Consents and Lien Releases.

(a) Sellers shall furnish Buyer with evidence satisfactory to it that Sellers have obtained the Transport Approval, the PUC Order and all of the Airport Consents.

(b) Sellers shall have delivered to Buyer each of the Consents and the Approvals (other than the Transport Approval, the PUC Order and the Airport Consents).

(c) The Assets shall be delivered to Buyer free and clear of any and all Liens, including, without limitation, all Liens listed in the Disclosure Schedules but excluding the Permitted Encumbrances, and all of the obligations related to the Retired Indebtedness shall be paid in full unless assumed by Buyer pursuant to the terms hereof.

6.6 Sellers Pre-Closing Deliveries to be Released by Escrow Agent. The Escrow Agent shall have released and delivered to Buyer pursuant to the terms of the Deposit Escrow Agreement, the documents, instruments and executed copies of the agreements described below

(a) A bill of sale for all of the Assets that are tangible personal property reasonably acceptable to Buyer and Sellers (the "**Bill of Sale**") executed by each Seller,

(b) An assignment of all of the Assets that are intangible personal property, which assignment shall also contain Buyer's undertaking and assumption of the Assumed Liabilities (other than the Real Property Leases) reasonably acceptable to Buyer and Sellers (the "**Assignment and Assumption Agreement**") executed by each Seller,

(c) Such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by Buyer at least five (5) Business Days prior to the Pre-Closing Date, each in form and substance reasonably satisfactory to Buyer, Buyer's legal counsel, Sellers and Sellers' legal counsel and executed by each Seller;

(d) A certificate executed by each Seller and each Parent as to the accuracy of their representations and warranties as of the Execution Date and the Pre-Closing Date in accordance with **Section 6.1**;

(e) Employment Agreements by and between Buyer and Jay R. Ufer, Thomas S. Ball, Tony Clement, Brian Seidel and Jeffrey E. Lehman ("**Key Management Employees**") acceptable to Buyer and such Key Employee (the "**Employment Agreements**");

(f) Long Term Supply Agreement for the supply of fuel, carwash services and other services by and between Buyer and Edwards Station, LLC ("**ES**") substantially in the form attached hereto as Exhibit B (the "**Supply Agreement**") executed by ES,

(g) A fully assignable Lease Agreement executed by ES substantially in the form attached hereto as Exhibit C (the "**ES Lease Agreement**") executed by ES;

(h) Either (i) a Special Warranty Deed reasonably acceptable to Buyer and Sellers (the "**Daily Lot Special Warranty Deed**") executed by TMS if, at the Closing, TMS is the owner of the Vail Daily Lot and Buyer has consented to the purchase by TMS of the Vail Daily Lot, or (ii) an Assignment of Purchase Contract reasonably acceptable to Buyer and Sellers (the "**Assignment of Purchase Contract**") executed by TMS if, at the Closing, TMS is not the owner of the Vail Daily Lot;

(i) The Exclusivity and Right of First Offer Agreement substantially in the form attached hereto as Exhibit D (the "**Exclusivity and Right of First Offer Agreement**") executed by ES;

(j) Special Warranty Deeds reasonably acceptable to Buyer and Sellers transferring the Owned Real Property, other than the Vail Daily Lot, to Buyer executed by each owner thereof (the "**Special Warranty Deeds**");

(k) An Assignment and Assumption of Lease Agreement for each Real Property Lease reasonably acceptable to Buyer and Sellers but subject to comments of the applicable lessor that Buyer has agreed to (the "**Assignment and Assumption of Lease Agreements**") executed by each applicable Seller;

(l) Noncompetition Agreements by and between Buyer and each of Harry Frampton, Craig Ferraro and Charles Madison, respectively, substantially in the form attached hereto as Exhibit E-1 and the non-competition agreements by and between Buyer and each of the Key Management Employees, respectively, substantially in the form attached hereto as Exhibit E-2 (collectively, the "**Noncompetition Agreements**"),

(m) Pro-forma commitments to issue policies of title insurance consistent with Section 5.11, in an aggregate amount equal to the amount of the Purchase Price allocated to the Owned Real Property, deleting all requirements listed in Schedule B-1, amending the effective date to the date and time of recordation of the deed transferring title to the Owned Real Property to Buyer with no exception for the gap between closing and recordation, deleting Title Objections as required pursuant to Section 5.11, attaching all endorsements required by Buyer in order to ensure provision of all coverage required pursuant to Section 5.11 and otherwise in form satisfactory to Buyer insuring Buyer's interest in each parcel of Owned Real Property or interest therein to the extent required by Section 5.11 (the "**Pro-Forma Title Insurance Commitments**");

(n) The Material Consents listed on Annex I;

(o) The Capex Schedule mutually agreed to between Buyer and Sellers;

- (p) The Remediation Agreement executed by each applicable Seller,
- (q) The Escrow Agreement executed by the Sellers' Representative;
- (r) The Assumed Contracts Schedule;
- (s) A Management Agreement reasonably acceptable to Buyer and ES (the "**ES Management Agreement**"); and
- (t) Such other documents, instruments, or certificates as shall be reasonably requested by Buyer or its counsel.

6.7 Sellers Closing Deliverables. Sellers or Parents, as applicable, shall have delivered, or caused to be delivered, to Buyer the certificates, documents and instruments described below.

- (a) Certificates of the officers or managers or managing members, as the case may be, of Sellers as may reasonably be required by Buyer to evidence compliance with the conditions set forth in this Article VI, other than Section 6.6;
- (b) A certificate executed by each Seller and each Parent as to the accuracy of their representations and warranties as of the Closing Date;
- (c) Organizational documents and constituent documents of each Seller certified as of the Closing Date;
- (d) A certificate of the Secretary of State of the State of formation of each Seller, certifying that such Seller is duly formed under the laws of such state and in good standing with the Secretary of State as of a date not more than five (5) days prior to the Closing Date;
- (e) Certified copies of the resolutions adopted by the manager(s) or managing member(s) and members of each Seller and certified copies of the resolutions adopted by the manager(s), managing member(s) or directors, as the case may be, of each Parent authorizing the execution and delivery of this Agreement and the Acquisition Documents to which Sellers and Parents are a party and the consummation of the transactions contemplated hereby and thereby;
- (f) A certificate executed by each Seller and each Parent as to their compliance with and performance of their covenants and obligations to be performed or complied with at or before the Closing in accordance with Section 6.2,
- (g) Any Material Consents not otherwise delivered to the Escrow Agent on or prior to the Pre-Closing Date;
- (h) The Preliminary Settlement Statement;

(i) Unconditional and binding commitments to issue policies of title insurance consistent with the Pro-Forma Title Insurance Commitments; and

(j) Pay-off letters and termination statements with respect to the Retired Indebtedness

ARTICLE VII

CONDITIONS TO OBLIGATIONS OF SELLERS PARENTS

Unless waived, in whole or in part, in writing by Sellers and Parents, the obligations of Sellers and Parents to effect the consummation of the transactions contemplated by this Agreement and the Acquisition Documents to which Sellers and Parents are a party shall be subject to the fulfillment prior to or at the Closing of each of the following conditions (the "**Sellers' Closing Conditions**", and together with the Buyer's Closing Conditions, the "**Closing Conditions**")

7.1 Representations and Warranties of Buyer to be True.

(a) The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on the Closing Date with the same effect as though made at such time.

(b) Buyer shall have performed all obligations and complied with all covenants required by this Agreement and the other agreements referred to herein to be performed or complied with by it at or prior to the Closing.

7.2 No Proceedings. No Proceeding or investigation pertaining to the transactions contemplated by this Agreement or any Acquisition Document or to the consummation of the transactions contemplated by this Agreement or the Acquisition Documents shall have been instituted or threatened on or prior to the Closing Date.

7.3 Buyer Pre-Closing Deliveries to be Released by the Escrow Agent. The Escrow Agent shall have released and delivered to Sellers pursuant to the terms of the Deposit Escrow Agreement the documents, instruments and executed copies of the agreements described below:

(a) The Assignment and Assumption Agreement executed by Buyer;

(b) The Assignment of Purchase Contract executed by Buyer if, at the Closing, TMS is not the owner of the Vail Daily Lot;

(c) The Assignment and Assumption of Lease Agreements executed by Buyer;

(d) Certified copies of the resolutions adopted by board of directors of Buyer authorizing the transactions contemplated hereby and by the Acquisition Documents to which Buyer is a party;

(e) The Assignment and Assumption Agreement, the Employment Agreements, the Exclusivity and Right of First Offer Agreement, the Remediation Agreement and the Escrow Agreement, each executed by Buyer; and

(f) Such other documents, instruments, or certificates as shall be reasonably requested by Sellers or their counsel.

7.4 Buyer Closing Deliverables. Buyer shall have delivered, or caused to be delivered (i) to Sellers, (A) the Cash Portion, (B) a certificate executed by Buyer as to the accuracy of its representations and warranties as of the Closing in accordance with Section 7.1, and (C) such certificates of its officers as may reasonably be required by Sellers to evidence compliance with the conditions set forth in this Article VII, other than Section 7.3, and (ii) to the Escrow Agent, the Cap Amount.

ARTICLE VIII INDEMNIFICATION

8.1 Survival. Notwithstanding (a) the making of this Agreement, (b) any examination made by or on behalf of the parties hereto, and (c) the Closing hereunder, (i) the representations and warranties of the parties contained herein or in any Acquisition Documents to which such party is a party or in any certificate required hereby or by an Acquisition Document to which such party is a party delivered pursuant hereto or thereto or in connection herewith or therewith shall survive until the second (2nd) anniversary of the Closing Date; provided that, the representations and warranties made in Sections 3.2 (Authority, Enforceability and Capitalization), 3.5 (No Brokers), and 3.6 (Title to Assets) (collectively, the "Selected Representations and Warranties") shall survive until the expiration of the applicable statute of limitations (including all periods of extension, whether automatic or permissive), and (ii) the covenants and agreements required to be performed after the Closing pursuant to any provision of this Agreement or any Acquisition Document to which such party is a party shall survive until fully performed by a party to this Agreement or fulfilled or waived by the appropriate party.

8.2 Indemnification.

(a) Subject to the provisions of Sections 8.1, 8.4, and 8.5 Sellers and Parents, jointly and severally, hereby indemnify, hold Buyer and Buyer's directors, officers, Affiliates, shareholders, employees, attorneys, agents, successors and assigns, in each case past, present, or as they may exist at any time after the Execution Date harmless from and against any and all claims, suits, actions, proceedings (formal or informal), investigations, judgments, deficiencies, actual damages (not including speculative or punitive damages), diminution in value, settlements, liabilities, losses, costs, expenses and reasonable legal and other expenses (including reasonable legal fees and expenses of attorneys chosen by any party entitled to indemnification) penalties and interest (any and all of the foregoing hereinafter are referred to as "Losses"), as and when incurred, arising out of or based upon (i) the failure of any representation or warranty, of Sellers or Parents contained in this Agreement or any Acquisition Document to which Sellers or Parents are a party, to be true and correct as of the applicable date (without regard to any knowledge, materiality or Material Adverse Change qualifiers contained in any such representation or

warranty, except for the knowledge qualifiers set forth in Sections 3.8, 3.9(a), 3.9(h), 3.14(d), 3.15(b)(i), 3.15(d), 3.15(e), 3.16 (but not with respect to any fact or circumstance relating to ES), 3.19(b), 3.19(c), 3.20(a), 3.20(c), 3.20(e), 3.20(g), 3.22(a), 3.22(d) and 3.26 and the materiality or Material Adverse Change qualifiers set forth in Sections 3.10, 3.12(a), 3.13(d), 3.14(a)(xiv), 3.15(d), 3.26 and 3.27); (ii) the failure of any representation or warranty of Sellers or Parents contained in this Agreement or any Acquisition Document to which Sellers or Parents are a party to be true and correct as of the Pre-Closing Date, provided that Sellers had Knowledge on the Pre-Closing Date of such failure, and provided, further, that Buyer has terminated this Agreement pursuant to Sections 10.1(b) or 10.1(i); (iii) any breach of any covenant or agreement of Sellers or Parents under the terms of this Agreement or the Acquisition Documents to which Sellers or Parents are a party; (iv) the ownership, operation or use of the Assets or conduct of the Business prior to the Effective Time, other than the Assumed Liabilities; (v) any and all liabilities of Sellers or Parents of any nature, whether accrued, absolute, contingent or otherwise, except for Buyer's obligations under the Assumed Liabilities after the Effective Time; (vi) the Retained Liabilities or Excluded Assets; (vii) any claims of any members of any Seller or any Parent arising out of Sellers' or Parents' distribution of the Purchase Price on or after the Closing Date, (viii) any brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by any Person with Sellers or Parents (or any Person acting on their behalf) in connection with any of the transactions contemplated by this Agreement or the Acquisition Documents; or (ix) any liability under the WARN Act or any similar state of local laws that may result from an "Employment Loss", as defined by 29 U.S.C. § 2101(a)(6), caused by any action of Sellers prior to the Closing or by Buyer's decision not to hire former employees of Sellers.

(b) Buyer shall indemnify and hold Parents, Sellers and Sellers' officers, directors, managers, members, shareholders, controlling Persons, employees, attorneys, agents, successors and assigns, in each case past, present or as they may exist at any time after the Execution Date harmless from and against all Losses, as and when incurred arising out of or based upon (i) the failure of any representation or warranty of Buyer contained in this Agreement to be true and correct as of the Closing; (ii) any breach of any covenant or agreement of Buyer under the terms of this Agreement or the Acquisition Documents to which Buyer is a party; (iii) the ownership, operation or use of the Assets by Buyer or a Buyer Affiliate or conduct of the Business by Buyer or any Buyer Affiliate after the Effective Time, (iv) Buyer's obligations under the Assumed Liabilities after the Effective Time; or (v) any brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by any Person with Buyer (or any Person acting on its behalf) in connection with any of the transactions contemplated by this Agreement and by the Acquisition Documents.

8.3 Indemnification Procedures. Whenever any claim arises which is, or may be, subject to indemnification pursuant to the provisions of this Article VIII, (an "**Indemnification Claim**"), the party seeking indemnification (the "**Indemnified Party**") shall promptly notify the party from which indemnification is sought (the "**Indemnifying Party**") in writing of the nature of the Indemnification Claim (the "**Notice of Claim**"), provided that the Notice of Claim must be provided to the Indemnifying Party by the Indemnified Party prior to the expiration of the

applicable survival period specified in Section 8.1 in the event the Indemnification Claim is based on a breach of a representation or warranty. The Notice of Claim shall specify the material facts known to the Indemnified Party concerning the Indemnification Claim and, to the extent possible, the amount of Losses arising from the Indemnification Claim. The failure of an Indemnified Party to so notify the Indemnifying Party of an Indemnification Claim shall not relieve the Indemnifying Party of any obligation to indemnify except to the extent the Indemnifying Party is prejudiced by such failure or in the event the Notice of Claim is not received by the Indemnifying Party within the time period described above. Within thirty (30) days after receipt of a Notice of Claim, the Indemnifying Party shall notify the Indemnified Party in writing whether it accepts or assumes the obligation to indemnify in whole or in part, and stating the reasons for a rejection, limitation on assumption and/or any reservation of rights. If the Indemnifying Party denies, fails to accept or assume, or is unable or unwilling to accept or assume its obligation to indemnify and assume the defense of the Indemnified Party, the Indemnified Party may proceed to take such actions, including retaining legal counsel, to defend or otherwise represent it in connection with the Indemnification Claim. The Indemnified Party shall be entitled, at its expense, to participate in any Proceeding or investigation, the defense of which has been assumed by the Indemnifying Party. If the Indemnifying Party acknowledges the Indemnified Party's right to indemnification hereunder with respect to such claim, the Indemnifying Party shall assume the defense of such claim with counsel reasonably satisfactory to the Indemnified Party and the Indemnified Party shall cooperate to the extent reasonably requested by the Indemnifying Party in the defense or prosecution thereof, provided that the Indemnified Party shall be reimbursed by the Indemnifying Party for its reasonable out-of-pocket costs in connection therewith. If the Indemnifying Party shall acknowledge the Indemnified Party's right to indemnification and elects to assume the defense of such claim, the Indemnified Party shall have the right to employ its own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, unless there is, under applicable standards of conduct, a conflict on any significant issue between the Indemnifying Party and the Indemnified Party that makes it improper for one counsel (as determined by such counsel in writing) to represent both parties, in which case the reasonable fees and expenses of such counsel shall be at the expense of the Indemnifying Party. If the Indemnifying Party has assumed the defense of any claim against the Indemnified Party, the Indemnifying Party shall have the right to settle any claim for which indemnification has been sought and is available hereunder: provided that, to the extent that such settlement requires the Indemnified Party to take, or prohibits the Indemnified Party from taking, any action or purports to obligate the Indemnified Party, then the Indemnifying Party shall not settle such claim without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed. If the Indemnifying Party does not assume the defense of a third-party claim and disputes the Indemnified Party's right to indemnification, the Indemnifying Party shall have the right to participate in the defense of such claim through counsel of its choice, at the Indemnifying Party's expense, and the Indemnified Party shall have control over the litigation and authority to resolve such claim, subject to the terms of this Section 8.3. Notwithstanding anything to the contrary in this Section 8.3, if an Indemnification Claim is covered by insurance and the carrier has accepted the claim, the parties agree, with respect to selection of counsel, to comply with the terms of the insurance policy.

8.4 Reduction for Insurance. The amount that an Indemnifying Party is required to pay to, for, or on behalf of an Indemnified Party pursuant to this Article VIII shall be reduced

(including, without limitation, retroactively) by any insurance proceeds derived from a policy held in the name of the Indemnifying Party actually received by the Indemnified Party or a third party in reduction of the related indemnifiable loss (the "Indemnifiable Loss"). Amounts required to be paid, as so reduced, are hereafter sometimes called an "Indemnity Payment". If an Indemnified Party shall have received, or if an Indemnifying Party shall have paid on its behalf, an Indemnity Payment in respect of an Indemnifiable Loss and shall subsequently actually receive insurance proceeds derived from a policy held in the name of the Indemnifying Party in respect of such Indemnifiable Loss, then such Indemnified Party shall promptly pay to the Indemnifying Party the amount of such insurance proceeds, or, if less, the amount of the Indemnity Payment. The parties hereto agree that the foregoing shall not affect the subrogation rights of any insurance companies making payments hereunder.

8.5 Limitations of Indemnity. Notwithstanding anything anywhere in this Agreement to the contrary, the rights of the parties to such indemnification hereunder shall be subject to the following limitations.

(a) Neither Sellers nor Parents shall be required to make a payment under Section 8.2(a)(i) unless and until the aggregate amount to be paid by such Sellers in the absence of this clause exceeds \$100,000 (the "Threshold"), in which event all such amounts shall be paid, including the Threshold; provided, however, that the Threshold shall not apply to breaches of the Selected Representations and Warranties or any representations and warranties relating to the Marketing Certificates or Credits, the representations and warranties made in Sections 3.7 (Absence of Undisclosed Liabilities) and 3.24 (Related Agreements) or the covenants made by Sellers and Parents hereunder. In addition, in no event shall the aggregate liability of Sellers and Parents under Section 8.2(a)(i) exceed the Cap Amount; provided, however, that the Cap Amount shall not apply to liability arising out of Sellers' or Parents' fraud or willful misrepresentation, or for a breach of the Selected Representations and Warranties or the covenants made by Sellers and Parents hereunder. Subject to Section 8.5(b), the funds held pursuant to the Escrow Agreement shall be the source of recovery for claims against Sellers or Parents pursuant to Section 8.2(a).

(b) Except in the case of a Party's fraud or willful misrepresentation, the indemnification provisions of this Article VIII shall be the sole and exclusive remedies of Buyer with respect to the a breach by Sellers or Parents of any representations and warranties contained in this Agreement, and such rights are in derogation of, and not in addition to, any statutory, common law, or equitable right or remedy.

(c) Buyer shall not have the right to seek indemnification from Sellers or Parents for the failure of any representation or warranty of Sellers or Parents contained in this Agreement to be true and correct as of the Execution Date or Pre-Closing Date if such failure was cured by the delivery of a supplement to the Disclosure Schedules to Buyer on or before the Closing Date or the date this Agreement is terminated pursuant to Article X.

(d) Buyer's right to seek indemnification from Sellers or Parents pursuant to Section 8.2(a)(ii) shall be limited solely and exclusively to liability (if any) for Buyer's

attorneys' fees and other out-of-pocket expenses (e.g., its Phase I and II environmental studies) incurred directly in connection with this Agreement. Buyer's right to seek indemnification from Sellers or Parents in the event Buyer terminates pursuant to Section 10.1(i) shall be limited solely and exclusively to liability (if any) arising under Section 8.2(a)(i).

(e) Buyer shall not have the right to seek indemnification from Sellers or Parents for the failure of any representation or warranty of Sellers or Parents contained in this Agreement to be true and correct as of the applicable date, to the extent that any of the Persons listed in Section 4.6 knowingly and intentionally withheld from Sellers and Parents actual knowledge of a material breach of such representation and warranty by Sellers or Parents which such Person had at the time of such breach at the Closing. Prior to the Closing, Buyer shall ask each of the Persons listed in Section 4.6 if they have actual knowledge of a material breach of any such representation or warranty by Sellers or Parents and, if any such Person answers in the affirmative, Buyer shall so notify Sellers' Representative prior to the Closing.

(f) The sole and exclusive remedy for any Losses arising out of or relating to the Specified Environmental Obligations shall be set forth in the Remediation Agreement and Buyer shall not have any right to seek any indemnification hereunder with respect thereto, including, without limitation pursuant to any of clauses (i) through (ix) of Section 8.2(a) or any other provision of this Agreement.

8.6 Insurance. Notwithstanding anything herein to the contrary:

(a) With respect to any Asset delivered at Closing which is damaged and for which Sellers have a claim against an insurance policy for such damage. Sellers agree to file a claim in good faith against such policy and to deliver the proceeds related to such claim to Buyer when received.

(b) With respect to any claim made by a third party against the Assets or Buyer for any damages incurred by such third party prior to the Effective Time for which Sellers have a claim against an insurance policy, Sellers agree to in good faith (i) file a claim against such policy with respect to such claim, (ii) seek to have the insurance carrier defend Buyer against such claim and (iii) deliver to Buyer any proceeds received by Sellers related to such claim, to the extent that Buyer is held liable or otherwise incurs Losses with respect to such claim, when received.

ARTICLE IX
ADDITIONAL COVENANTS

9.1 Payment of Taxes, Filing of Returns With respect to the ownership of the Assets or conduct of the Business until the Effective Time, each Seller and each Parent shall, from and after the Closing Date, (a) duly and timely file or caused to be filed on a timely basis all Tax Returns that are required to be filed by them and such Tax Returns shall be true, correct and complete in all material respects, and (b) pay or cause to be paid all Taxes (whether or not shown on any Tax Return) due from them to federal, foreign, state or local taxing authorities.

9.2 Payment of all Taxes Resulting from Sale of Assets. Sellers and Parents shall pay in a timely manner and shall file all Tax Returns with respect to (i) all Taxes resulting from or payable in connection with the transfer of the Real Property, and (ii) all Taxes (other than Taxes relating to the transfer of the Real Property) in excess of \$100,000 resulting from or payable in connection with the sale of the Assets pursuant to this Agreement, regardless of the Person on whom such Taxes are imposed ("**Sales Taxes**"). Buyer shall agree to pay the first \$100,000 of such Sales Taxes.

9.3 Cooperation on Tax Matters. Following the Closing, the parties shall cooperate fully with each other and shall make available to the other, as reasonably requested and at the expense of the requesting party, and to any taxing authority, all information, records or documents relating to Tax liabilities or potential Tax liabilities of Sellers relating to the Business as conducted by Sellers on or prior to the Closing and any information which may be relevant to determining the amount payable under this Agreement, and shall preserve all such information, records and documents (to the extent a part of the Assets delivered to Buyer at the Closing) at least until the expiration of any applicable statute of limitations or extensions thereof.

9.4 Payment of Liabilities. Sellers shall, and Parents shall cause Sellers to pay, or make adequate provision for the payment, in full all of the Retained Liabilities under this Agreement. If any such Retained Liabilities are not so paid or provided for, or if Buyer reasonably determines that failure to make any payments will impair Buyer's use or enjoyment of the Assets or conduct of the Business, Buyer may, at any time after the Closing Date, elect to make all such payments directly (but shall have no obligation to do so) and to seek indemnification therefor under the terms of Article VIII; provided, however, that prior to making any such payment, Buyer shall give Sellers and Parents notice thereof and provide Sellers and Parents with the reasonable opportunity to pay or otherwise deal with such Retained Liability.

9.5 Employee Benefits.

(a) Each Seller shall remain liable for, and retains all responsibility for, any of its Seller's Plans and all claims and obligations arising at any time in connection with, or relating to, (a) employment, denial of employment or termination of employment with such Seller, (b) an Employee Benefit Plan that such Seller or one of its ERISA Affiliates sponsors, maintains, or to which it makes contributions, including, but not limited to, any of its Seller's Plans, or (c) violations by such Seller of COBRA

(b) Notwithstanding anything to the contrary in this Agreement, Buyer shall (i) permit the Continuing Employees and the Continuing Employees' dependents to participate in Buyer's Employee Benefit Plans to the same extent as Buyer's similarly situated employees and their dependents; (ii) give each Continuing Employee credit for his or her past service with the applicable Seller but not a predecessor to such Seller or previous employer for purposes of eligibility to participate, benefit eligibility and vesting (but not benefit accrual) under Buyer's Employee Benefit Plans; provided that such past service shall be credited in accordance with Buyer's regular service crediting practices and in accordance with the provisions of the Buyer's Employee Benefit Plans; and (iii) not subject any Continuing Employee to any limitations on benefits for pre-existing

conditions under Buyer's Employee Benefit Plans, including any group health and disability plans.

9.6 Health Plan Coverage.

(a) For purposes of this Section 9.6, the term "**COBRA Coverage**" means the health insurance coverage required to be offered pursuant to COBRA.

(b) Notwithstanding anything in this Agreement to the contrary, each Seller shall cause each group health plan which it sponsors for its employees and their eligible dependents to make COBRA Coverage available to all of such Seller's qualified beneficiaries, as such term is defined by COBRA (26 U.S.C. § 4980B(g)(1); 29 U.S.C. § 1167(3)) (the "**Qualified Beneficiaries**") in accordance with the provisions of COBRA. Such Seller shall retain the responsibility for compliance with all requirements under COBRA with respect to such Seller's employees and eligible dependents of such Seller's employees, who become Qualified Beneficiaries as a result of the transactions contemplated by this Agreement or by the Acquisition Documents. Each Seller shall further retain the responsibility for compliance with all requirements under COBRA with respect to employees, former employees and all such Qualified Beneficiaries who experienced "qualifying events" as defined by COBRA (26 U.S.C. § 4980B(f)(3); 29 U.S.C. § 1163) prior to the Closing Date.

(c) Each Seller may discontinue each group health plan and, therefore, discontinue the COBRA Coverage of the Qualified Beneficiaries who are eligible for such coverage, only upon ninety (90) days' prior written notice to Buyer in advance of such group health plan discontinuance. In the event that Buyer is caused to assume any or all of any Seller's responsibility for COBRA Coverage, including any and all liability for such coverage whatsoever, within ten (10) days after the presentation by Buyer to such Seller of documentation of such liability, such Seller agrees to pay and be liable to Buyer and its ERISA Affiliates and shall assume, indemnify, defend and hold harmless Buyer and its ERISA Affiliates from and against and in respect of any and all losses, damages, liabilities, taxes or sanctions that arise under COBRA, interest, and penalties, costs and expenses (including, without limitation, increased premium or other costs to Buyer in the maintenance of its health care plan as a result of it having to provide COBRA Coverage to such Seller's Qualified Beneficiaries, disbursements, reasonable legal fees incurred in connection therewith and in seeking indemnification therefor, and any amounts or expenses required to be paid or incurred in connection with any action, proceeding, suit, claim, appeal, demand assessment or judgment) imposed upon, incurred by or assessed against Buyer and its ERISA Affiliates and any of Buyer's employees arising by reason of or relating to any failure of such Seller to comply with the continuation health care coverage requirements of COBRA or to maintain its COBRA Coverage obligations and responsibilities as set forth hereinabove. Notwithstanding anything in this Agreement to the contrary, the provisions of this Section 9.6 shall survive the Closing.

9.7 Post-Closing Access to Information. If, after the Closing, in order to properly operate or windup the Business or the Assets, or prepare documents, Tax Returns or reports

required to be filed with any governmental entity or prepare financial statements, it is necessary that a party obtain additional information within the possession of another party relating to the Business or the Assets, the party in possession of such information shall promptly furnish or cause its representatives to furnish such information to the other party, at the requesting party's sole cost and expense.

9.8 Public Announcements. Buyer and Sellers shall advise and confer with one another prior to the issuance of any reports, statements or releases concerning this Agreement, the terms hereof and the transactions contemplated herein or in the Acquisition Documents and Sellers and Parents will not make any public disclosure of the terms of this Agreement or the Acquisition Documents, or the transactions contemplated hereby or by the Acquisition Documents without Buyer's prior written consent. Nothing contained in this Section 9.8 shall prevent any party hereto at any time from furnishing any information to any governmental entity or pursuant to the requirements of any applicable Laws; provided, however, that the disclosing party shall not make any such disclosure without first notifying the other parties and allowing any other parties a reasonable opportunity to seek injunctive relief from (or protective order with respect to) the obligation to make such disclosure. Notwithstanding the foregoing, Buyer and Sellers acknowledge and agree Buyer is either a "public company" or is affiliated with a "public company" subject to the Securities Exchange Act of 1934, as amended (including the rules and regulations promulgated by the Securities Exchange Commission thereunder), as well as the requirements of any exchange on which such public company's securities are traded (collectively, "Disclosure Obligations") and that, notwithstanding any other provision herein, such public company may disclose to its shareholders and publish such information as it determines, in its sole discretion, is necessary and appropriate to comply with its Disclosure Obligations, including its disclosure and reporting requirements under such Disclosure Obligations; provided that such disclosing party will take reasonable measures to notify the other parties of such disclosure before such disclosure is made. In the event that such public company decides that its Disclosure Obligations require that such public company distribute a press release regarding the transactions contemplated hereunder, the parties agree that Sellers shall have the right to review such press release prior to its release and include an appropriate statement therein.

9.9 Further Assurances. After the Closing, Sellers and Parents will promptly refer all inquiries with respect to ownership of the Assets or the Business to Buyer. In addition, Sellers and Parents, upon Buyer's request, agree to use their best efforts to promptly transfer (consistent with the terms of this Agreement) to Buyer any Asset that was used in the operations of the Business prior to the Effective Time but that was not transferred to Buyer on the Closing Date. Sellers and Parents will also execute and deliver such documents as Buyer may reasonably request from time to time to evidence transfer of the Assets to Buyer. Buyer will execute and deliver such documents as Sellers may reasonably request from time to time to evidence the assumption by Buyer of the Assumed Liabilities.

9.10 Confidentiality. The terms of the Confidentiality Agreement between The Vail Corporation and EW Holdings dated as of January 14, 2008 (the "Confidentiality Agreement") are incorporated herein by this reference and shall continue in full force and effect until the Closing, at which time the Confidentiality Agreement and the obligations of the parties hereto under the Confidentiality Agreement shall terminate, except as they relate to disclosure of the

terms of this Agreement, including, without limitation, the Purchase Price, which shall only be disclosed to non-parties with the prior consent of Buyer and the Sellers' Representative (and in no event prior to the Closing) To the extent that the terms and condition of this Agreement and the Confidentiality Agreement conflict, the terms of this Agreement shall control. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement shall nonetheless continue in full force and effect in accordance with its terms.

9.11 Noncompetition.

(a) Each Seller and each Parent agrees that during the ten (10) year period following the Closing Date (the "**Non-Compete Period**") such Seller and Parent shall not, directly or indirectly, either for itself, himself or herself or for any other Person, participate in a Competitive Business. For purposes of this Agreement, the term 'participate' includes: (i) any direct or indirect interest in any enterprise, whether as an officer, director, manager, employee, partner, member, sole proprietor, agent, representative, independent contractor, consultant, franchisor, franchisee, creditor, lender or owner, provided that, the term 'participate' shall not include ownership of less than five percent (5%) of the stock of a publicly-held corporation whose stock is traded on a national securities exchange or in the over-the-counter market; or (ii) acting as a lessor or supplier to, or a landlord of any Person that conducts a Competitive Business.

(b) **Non-Solicitation.** During the three (3) year period following the Closing Date, none of Sellers or Parents shall, directly or indirectly, (i) solicit for employment, employ, induce or attempt to induce any former management or executive employee of Sellers to leave the employ of Buyer or a Buyer Affiliate or in any way interfere with the relationship between Buyer or a Buyer Affiliate and any such former management or executive employee, (ii) induce or attempt to induce any former customer or supplier of Sellers to cease doing business with or in any way interfere with the relationship of such former customer or supplier with Buyer, (iii) knowingly induce or attempt to induce any employee of Buyer to leave the employ of Buyer or in any way interfere with the relationship between Buyer and any employee thereof, or (iv) knowingly induce or attempt to induce any customer or supplier of Buyer to cease doing business with Buyer. Each Seller and Parent agrees that this covenant is reasonable with respect to its duration, geographical area and scope.

(c) **Specific Performance.** Each Seller and Parent agrees that Buyer would suffer irreparable harm from a breach by such Seller or Parent of any of the covenants or agreements contained in this **Section 9.11**. In the event of an alleged or threatened breach by a Seller or Parent of any of the provisions of this **Section 9.11**, Buyer or its successors or assigns may, in addition to all other rights and remedies existing in its favor, apply to any court of competent jurisdiction for specific performance and/or injunctive or other relief (without the posting of a bond or other securities) in order to enforce or prevent any violations of the provisions hereof. To the extent of any breach of this **Section 9.11** by a Seller or Parent, the Non-Compete Period (with respect to such breaching Seller or Parent) shall automatically be extended so long as such breach continues uncured.

(d) Scope, etc. If, at the time of enforcement of any of the provisions of this Section 9.11, a court holds that the restrictions stated therein are unreasonable under the circumstances then existing, the parties hereto agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area. Each Seller and Parent acknowledges that, without the provisions contained in this Section 9.11, Buyer would have not entered into this Agreement.

ARTICLE X **TERMINATION**

10.1 Termination. This Agreement may be terminated at any time before the Closing.

(a) by mutual written consent of Buyer and Sellers;

(b) by Buyer or Sellers if there has been a material breach or misrepresentation on the part of the other party of any representation, warranty or covenant set forth in this Agreement that has not been cured within thirty (30) Business Days after delivery of written notice thereof; provided that, there is not a material uncured breach or misrepresentation on the part of the party seeking termination of any representation, warranty or covenant set forth on this Agreement made by such party;

(c) by Buyer before the expiration of the Due Diligence Period, in Buyer's sole and absolute discretion;

(d) by Buyer if the Closing has not occurred on or before the expiration of the Approval Period because one or more of the conditions set forth in Article VI (other than Section 6.5(a)) have not been met;

(e) by Sellers if the Transport Approval, the PUC Order and the Airport Consents have been received but the Closing has not occurred on or before the expiration of the Approval Period because the conditions set forth in Article VII have not been met, provided the conditions set forth in Article VI (other than Section 6.5(a)) have been met;

(f) by Buyer, if the Closing has not occurred on or before the expiration of the Approval Period because the Transport Approval, the PUC Order or the Airport Consents have not been obtained;

(g) by Buyer, in its sole and absolute discretion, at any time after the Pre-Closing Date;

(h) by Buyer, if any Seller pursuant to Section 5.4 notifies Buyer of (or if Buyer otherwise becomes aware of) an event or circumstance that such Seller knows will result or has the reasonable prospect of resulting in Sellers being unable to meet the conditions set forth in Section 6.4;

(i) by Buyer if Sellers submit to Buyer a supplement to the Disclosure Schedules after the Pre-Closing Date and such supplement is not acceptable to Buyer in its sole and absolute discretion; and

(j) by Sellers pursuant to the terms of Section 5.1.

10.2 Effect of Termination.

(a) In the event of termination of this Agreement as expressly permitted under Section 10.1 hereof, this Agreement shall forthwith become void (except for this Section 10.2, Sections 5.7 (provided that Section 5.7 shall terminate if this Agreement is terminated pursuant to Section 10.1(a)), 9.8, 9.10, 11.2 and 11.14, and Article VIII and Article XI) and, subject to the terms and conditions of Sections 10.2(b) and 10.2(c), there shall be no liability on the part of Sellers, Parents or Buyer (including without limitation, their respective officers, directors, shareholders, members or managers)

(b) If this Agreement is terminated pursuant to Section 10.1(b) as a result of the material breach or misrepresentation by the non-terminating party of the representations, warranties and covenants of such party contained in this Agreement and subject to Section 8.5(c), such party shall be fully liable for any and all Losses sustained or incurred as a result of such breach or misrepresentation. In the event of termination hereunder before the Closing, each party shall destroy or return promptly to the other party all documents, work papers, and other materials of the other party furnished or made available to such party or its representatives or agents and all copies thereof.

(c) If this Agreement is terminated pursuant to Section 10.1(a), by Buyer pursuant to Sections 10.1(b), 10.1(c), 10.1(d), 10.1(f), 10.1(h) or 10.1(i) or by Sellers pursuant to Section 10.1(j) the Deposit (plus all interest accrued thereupon) shall be released to Buyer without condition.

(d) If this Agreement is terminated by Buyer pursuant to Section 10.1(g) or terminated by Sellers pursuant to Section 10.1(b) or 10.1(e) (but only in the event that the Closing has not occurred because Buyer fails to meet the conditions set forth in Sections 7.4(i)(A), (i)(B) or (ii)), the Deposit (plus all interest accrued thereupon) shall be released to Sellers; provided, however, that in the case of a termination by Sellers pursuant to Section 10.1(h), the Deposit and accrued interest shall be released only in the event that (i) Sellers have sent Buyer written notification of their intention to terminate this Agreement as a result of Buyer's material breach or misrepresentation, which notice shall contain a reasonably detailed description of such breach or misrepresentation, (ii) such breach or misrepresentation would materially prevent the consummation of the sale and purchase of the Assets and assumption of the Assumed Liabilities, (iii) such breach is not cured within thirty (30) Business Days of the delivery of such notice, and (iv) the other conditions set forth in the Deposit Escrow Agreement have been met.

ARTICLE XI **MISCELLANEOUS**

11.1 Successors and Assigns. No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other parties, except that Buyer may assign any of its rights under this Agreement to any subsidiary or a Buyer

Affiliate. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties.

11.2 Notices. All notices, demands and other communications (collectively, "**Notices**") given or made pursuant to this Agreement shall be in writing and shall be deemed to have been duly given if sent by registered or certified mail, return receipt requested, postage and fees prepaid or by overnight service with a nationally recognized "next day" delivery company such as Federal Express or United Parcel Service, to the following addresses

(a) if to Buyer:

c/o Vail Resorts, Inc.
390 Interlocken Crescent, Suite 1000
Broomfield, CO 80021
Attention: Fiona Arnold, Esq.,
Senior Vice President and General Counsel
Facsimile: (303) 648-4748

with a copy to:

Brownstein Hyatt Farber Schreck, L.L.P.
410 17th Street, Suite 2200
Denver, CO 80202
Attention: Thomas B. Romer, Esq.
Facsimile: (303) 223-1111

(b) if to Sellers, Parents or the Sellers' Representative:

Harry H. Frampton, III
100 East Thomas Place, 5th Floor
Drawer 2770
Beaver Creek, CO 81620
Facsimile: (970) 845-7205

with a copy to.

Sherman & Howard L.L.C.
633 17th Street, Suite 3000
Denver, CO 80202
Attention: James F. Wood, Esq. and Scott Pullara, Esq.
Facsimile: (303) 298-0940

Any Notice shall be deemed duly given when received by the addressee thereof, provided that any Notice sent by registered or certified mail shall be deemed to have been duly given five (5) Business Days from the date of deposit in the United States mails, unless sooner received. Any of the parties to this Agreement may from time to time change its address for receiving notices by giving written notice thereof in the manner set forth above.

11.3 Amendment; Waiver. No provision of this Agreement may be waived unless in writing signed by all of the parties to this Agreement, and the waiver of any one provision of this Agreement shall not be deemed to be a waiver of any other provision. This Agreement may be amended only by a written agreement executed by all of the parties to this Agreement.

11.4 No Third Party Beneficiaries. This Agreement constitutes an agreement solely among the parties hereto and is not intended to and will not confer any rights, remedies, obligations or liabilities, legal or equitable, on any Person (including, without limitation, any employees or creditors of any Seller) other than the parties hereto and their respective heirs, permitted successors and assigns, or otherwise make any Person a third party beneficiary under or by reason of this Agreement.

11.5 Governing Law. This Agreement shall be governed by and construed, both as to validity and performance, and enforced in accordance with the laws of the State of Colorado without giving effect to the conflicts of law principles thereof.

11.6 Time of the Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

11.7 Venue. Each of the parties irrevocably consents to the exclusive jurisdiction of any state or federal court in or for the State of Colorado, Denver County and City of Denver, in connection with any matter based upon or arising out of this Agreement or the matters contemplated hereby or by the Acquisition Documents, and agrees that process may be served upon them in any manner authorized by the laws of the State of Colorado for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction and such process.

11.8 Attorneys' Fees. In any dispute hereunder, the prevailing party shall be entitled to recover its reasonable attorneys' fees, court costs and other reasonable litigation costs.

11.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile signature.

11.10 Remedies Cumulative Except to the extent expressly limited by Section 8.5(b), (and in the event of any conflict between Section 8.5(b) and this Section 11.10, Section 8.5(b) shall supersede this Section 11.10), each of the various rights, powers and remedies hereunder shall be deemed to be cumulative with, and in addition to, all the rights, powers and remedies that any party may have hereunder or under applicable Laws relating hereto or to the subject matter hereof, and the exercise or partial exercise of any such right, power or remedy shall constitute neither an exclusive election thereof nor a waiver of any other such right, power or remedy.

11.11 Specific Performance. Each party hereby agrees and acknowledges that actual performance of each of the covenants set forth in Articles II, VI, VII and IX in this Agreement is material and essential to each of the party's consent to enter this Agreement. Each party further agrees and acknowledges that the remedies available at law would be inadequate to remedy a failure of any party to perform the covenants set forth in Articles II, VI, VII and IX stated in this

Agreement. In the event any party fails to perform its covenants set forth in Articles II, VI, VII and IX under this Agreement, any party benefiting from the required performance may seek specific performance from the non-performing party in a court of equity without the posting of a bond. Nothing in the provisions of this Section 11.11 shall be deemed to be the exclusive remedy of a party to this Agreement. Except to the extent expressly limited by Section 8.5 (and in the event of any conflict between Section 8.5 and this Section 11.11, Section 8.5 shall supersede this Section 11.11) and each party shall have all remedies available at law or in equity for breach of this Agreement.

11.12 Headings. The section and subsection headings contained in this Agreement are included for convenience only and form no part of the agreement among the parties.

11.13 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable Laws, but if any provision of this Agreement shall be or become prohibited or invalid under applicable Laws, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

11.14 Expenses. Notwithstanding anything herein to the contrary, each party shall pay its own costs and expenses, including, without limitation, the fees and expenses of its legal counsel and financial advisors. Sellers will pay all amounts payable to the Title Insurer in respect of the Title Commitments, copies of exceptions and the related title policy, including premiums (including premiums for endorsements), search fees and recording fees. Buyer will pay one-half and Sellers will pay one-half of the fees and expenses of the Escrow Agent under the Deposit Escrow Agreement. If this Agreement is terminated, the obligation of each party to pay its own fees and expenses will be subject to any rights of such party arising from a breach of this Agreement by another party.

11.15 Interpretation. In this Agreement, unless a clear contrary intention appears: (a) the singular number includes the plural number and vice versa; (b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (c) reference to any gender includes each other gender; (d) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; (e) reference to any legal requirement means such legal requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any legal requirement means that provision of such legal requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision; (f) "hereunder", "hereof", "hereto", and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof; (g) "including" (and with correlative meaning "include") means including, without limiting the generality of any description preceding such term; (h) "or" is used in the inclusive sense of "and/or"; (i) with respect to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and any time period shall expire at midnight on the last

day of such period; (j) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto; and (k) the representations and warranties made herein shall be deemed to include disclosures made in the Disclosure Schedules.

11.16 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, and all accounting determinations hereunder shall be made, in accordance with GAAP.

11.17 Legal Representation of the Parties. This Agreement, together with the Acquisition Documents, the Disclosure Schedules, and all agreements, certificates, schedules and exhibits attached thereto or otherwise to be entered into or delivered in connection with the transactions contemplated hereby, was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.

11.18 Entire Agreement. This Agreement together with the Acquisition Documents, the Disclosure Schedules, and all agreements, certificates, schedules and exhibits attached thereto or otherwise to be entered into or delivered in connection with the transactions contemplated hereby constitutes and embodies the entire understanding and agreement of the parties hereto relating to the subject matter hereof and there are no other agreements or understandings, written or oral, in effect between the parties relating to such subject matter except as expressly referred to herein.

11.19 Designation of Sellers' Representative: Actions by Sellers.

(a) Sellers and Parents hereby designate and appoint Harry F. Frampton, or its successor or replacement, as their representative, agent, proxy and attorney-in-fact (the "Sellers' Representative") for the purpose of discharging the duties of the Sellers' Representative under this Agreement, and the Sellers' Representative shall have the full power and authority to bind Sellers and Parents through its actions and inactions pursuant to the terms of this Agreement. In the event of the resignation, removal, death, disability or incapacity of the Sellers' Representative, a successor representative shall thereafter be promptly appointed by action of Sellers and Parents. The successor Sellers' Representative shall execute an instrument accepting such appointment, and such appointment shall become effective as to any such successor when a copy of such instrument shall have been delivered to Buyer. Without limiting the generality of the foregoing, the Sellers' Representative shall have full and complete authority to handle all matters on behalf of Sellers and Parents relating to this Agreement subsequent to the Closing, including, without limitation: (i) the general oversight and management of all matters relating to any adjustments to the Purchase Price pursuant to the terms of this Agreement, (ii) the management and control of any and all indemnification claims hereunder (including disputes and notices relating thereto and resolution thereof and the initiation of legal actions on behalf of Sellers and Parents in connection therewith), (iii) giving and receiving Notices, consenting to waivers under this Agreement subsequent to the Closing and approving any amendments to this Agreement subsequent to the Closing, (iv) the resolution of all matters related to the payment, release and

distribution of the Deposit, and (v) hiring and retaining legal counsel, accountants and other persons as the Sellers' Representative may deem necessary or appropriate, in its sole discretion, in connection with any such matters.

(b) Buyer shall be able to rely conclusively on the actions, instructions and decisions of the Sellers' Representative on behalf of Sellers and Parents as to (i) the resolution of any disputes between Buyer, on one side, and Sellers or Parents, on the other side, under this Agreement; (ii) the defense or settlement of any claims for indemnification by Buyer; and (iii) any other actions required to be taken subsequent to the Closing by the Sellers' Representative hereunder.

(c) Sellers and Parents hereby waive any and all claims against Buyer based upon the actual or alleged lack of authorization by Sellers and Parents of the Sellers' Representative with respect to any action taken by Buyer in reliance on the authority of the Sellers' Representative pursuant to this Section 11.19

(d) Sellers and Parents, severally and not jointly, agree to indemnify the Sellers' Representative with respect to any losses incurred by the Sellers' Representative with respect to its actions taken in good faith on behalf of Sellers or Parents pursuant to this Agreement, and to hold the Sellers' Representative harmless from and against any loss, liability, claim or expense incurred on the part of the Sellers' Representative and arising out of or in connection with the acceptance or administration of the Sellers' Representative's duties hereunder, including the reasonable fees and expenses of any legal counsel retained by the Sellers' Representative.

[Signature Page to Follow]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

BUYER:

DELIVERY ACQUISITION, INC.

By: _____

Name: _____

Title: _____

SELLERS.

**EAST WEST RESORT TRANSPORTATION
HOLDINGS, LLC, by HF Holding Corp., its
Manager**

By: _____

Name: _____

Title: _____

**TRANSPORTATION MANAGEMENT
SYSTEMS, LLC, by East West Resort
Transportation Holdings, LLC, its Manager, by
HF Holding Corp., its Manager**

By: _____

Name: _____

Title: _____

**EAST WEST RESORT TRANSPORTATION,
LLC, by East West Resort Transportation
Holdings, LLC, its Manager, by HF Holding
Corp., its Manager**

By: _____

Name: _____

Title: _____

27TH STREET, LLC, by Transportation Management Systems, LLC, its Manager, by East West Resort Transportation Holdings, LLC, its Manager, by HF Holding Corp., its Manager

By: _____
Name: _____
Title: _____

2701 MIDLAND AVENUE, LLC, by Transportation Management Systems, LLC, its Manager, by East West Resort Transportation Holdings, LLC, its Manager, by HF Holding Corp., its Manager

By: _____
Name: _____
Title: _____

224 ANNIE ROAD, LLC, by Transportation Management Systems, LLC, its Manager, by East West Resort Transportation Holdings, LLC, its Manager, by HF Holding Corp., its Manager

By: _____
Name: _____
Title: _____

23 PONDEROSA CIRCLE, LLC, by Transportation Management Systems, LLC, its Manager, by East West Resort Transportation Holdings, LLC, its Manager, by HF Holding Corp., its Manager

By: _____
Name: _____
Title: _____

PARENTS

HF HOLDING CORP.

By: _____
Name: _____
Title: _____

HF TRANSPORTATION, LLC, by HF Holding Corp., its Manager

By: _____
Name: _____
Title: _____

EAST WEST RESORTS MANAGEMENT II, LLC, by HF Holding Corp., its Manager

By: _____
Name: _____
Title: _____

East West Resort Transportation, LLC**2.1 Tangible Personal Property**

<u>Description</u>	<u># Of Units</u>
Furniture & Fixtures:	
Trailer	1
Blinds	N/A
Accounting/Group Sales Furniture	N/A
Office Furniture	N/A
Additional Office Furniture	N/A
Additional Office Furniture	N/A
Additional Office Furniture	N/A
Driver Area Cabinet Work	N/A
Edwards Office Furniture	N/A
Edwards Office Furniture	N/A
Edwards Housing Furniture	N/A
Kinetico Water Filter System	1
Empl Housing Storage Work	1
Empl Housing Storage Work - Doors	2
Noise Suppression/Install	N/A
HVAC System	N/A
Century Ninja Deluxe 100 Steam Cleaner	1
Continental 20lb Washer/Unimac Dryer	1
Syntax Angle Wall Mount LCD TV WM15D	1
Olevia 42" LCD (Serial #EA033F305E2142)	1
Olevia 42" LCD (Serial #S016503443B, #S016503442A)	2
AMS new air conditioner systems room	1
Office Depot mobility multifunction task chair	15
Furniture for housing units	N/A
Edwards office/couch	1
Accounting area modular furniture	N/A
Office Depot mobility multifunction task chair	16
EV Parking Lot - car wash machine	1
GWS Refrgerator	1
GWS Office Furniture	N/A
GWS Blinds	N/A
GWS Housing Furniture	N/A
GWS Housing Furniture	N/A
GWS Washer/Dryer for Shop	1
Kinetico Water Filter System	1
GWS Housing Furniture	N/A
GWS Housing Furniture	N/A
Stainless Steel Toggle Vacuum	1
Car Wash Boiler & Storage Tank & Install	N/A
Car Wash Pumps F.D Taylor Electrical Work	N/A
Task Chairs	11
Kinetico Water Filter System	1
Silverthorne Office Sign	1
40 Gallon Natural Gas Water Heater	1
Office furniture	N/A
Office furniture	N/A
Vacuum, tank only, 2 motor	1
Office furniture	1
Office furniture	1
Blinds	N/A
Office furniture	N/A
Office furniture	N/A

at West Resort Transportation, LLC
2.1 Tangible Personal Property

Description	# Of Units
Silv - housing furniture	N/A
Silv - housing blinds	N/A
Fax stand	1
Silv - housing furniture	1
Silv - car wash heaters	1
Silv - washer & dryer	1
Lighted sign for DIA Counter	2
Luggage Carts	21
Luggage Carts	15

Fleet Accessories:

2002 BUC - Open Car Hauler	N/A
Ski Tubes - Subs	11
2000 Interstate Trailer	1
Ski Racks - Vans	32
Ski Tubes - Subs	16
2006 E-Van conversions	7
Car Seats	16
Ski Tubes - Subs	9
Ski Racks - Vans	28
Suburban Tow Hitch Steps	18
DVD players - Premier	5
DVD players - E-Vans	7
Sand Spreader	1
Pro Nets	210
Ski Racks - Vans	123
Ski Tubes - Subs	6
Back of the van signs	185
Running Boards for 5 Merchant Automotive Vans	5
Car seats	22
Suburban Tow Hitch Steps	14
DVD players - Premier	6

Leasehold Improvements:

Graybar/JL Viele	N/A
Firkins Garage Door	2
WB Montag /Windows/Drywall anchors	N/A
Silv Office remodel	N/A
120 Gallon Lined Steel Hot Water Storage Tank/Water heater	1
Silv - Generator/Installation	1
Silv - office parking lot upgrade	1
Silv - office fence	1
Silv - wash bay electrical work/weatherproof boxes & plates	1
Silv - lights and receptacles on /fence	1
DIA - TV Project Electrical Work	1
Eagle - TV Project Mounting	1
Parking Lot Lights in Glenwood	1
Silv - sump pumps	2
Silv - Concrete removal	1
Silv - garage doors	1
Silv - Snowmelt/wash bay apron	1

West West Resort Transportation, LLC
2.1 Tangible Personal Property

<u>Description</u>	<u># Of Units</u>
Silv - gas pumps and install	2
DIA - electncal	1
Silv - building maintenance	N/A
Silv - office remodel	N/A
Silv - office remodel	N/A
GWS - office 6 gallon water heater	1
Silv - water heater (start 1/08)	1
Silv - repave parking lot (start 1/08)	1
Edw - Ruggs Benedict/carpet (lease end 10/2009)(start1/08)	1
Silv - sealcoat parking lot	1
Silv - fuel pumps (start 1/08)	1
Silv - electrical work (start 1/08)	1

Fuel Inventory in Silverthorne ASTs of "x" gallons

Transportation Management Systems, LLC

2.1 Tangible Personal Property

<u>Description</u>	<u># Of Units</u>
Office Equipment:	
American Security Products Fire Safe	1
Fireking 25 Safe	1
Sys 75 TN747B Trunk Card	1
Sys 75 TN750	1
Sys 75 TN754B Digital Line Card	2
AT&T 7406+ Digital Phone	8
Sys75 TN767E DSI Interface/Kentox List 7 CSU	1
AT&T Phone Equipment	N/A
AT&T Definity G3Si	1
Generator	1
Avaya Financial Phone Equipment Buyout	N/A
AT&T 7406+ Digital Phone	5
Renz RI100 Roller Insertor	1
PDI OD-4000 Electric Punch	1
Definity ProLogix R10 w/ CentreVu dual connect agents (see Usbancorp note)	N/A
Avaya Intuity ALX R5 1 (Imagine Technologies)	N/A
Fujitsu Fi-5120C Scanner (Serial #47598, 47484, 42008)	3
Fujitsu Fi-5120C Scanner (Serial #052806)	1
Infocus 26" Workbig 1700 Lumen Projector Lamp (Serial #1SARLC62701925)	1
Infocus Work Big IN26" DLP Projector (Serial # 1SAUNC72701787)	1
Avaya Intuity ALX R5 1 (Imagine Technologies)	N/A
Fujitsu Fi-5015C Scanner (Ser #003669, 003643, 003648, 003680)	4
Lucent Technology Telephones	15
Fujitsu Fi 60F Scanner (Ser #102992)	1
Fujitsu FI-5015C Scanner (Ser #003640)	1
Infocus - Projector Lamp	2
Avaya Intuity ALX R5 1 (Imagine Technologies)	N/A
Infocus Work Big IN36" Projector (Ser #1SAVCV73200698)	1
Fujitsu FI-5015C Scanner (Ser #003656)	1
Fujitsu FI-5015C Scanner (Ser #002886)	1
Drop Safe	1
19" Emerson TV/VCR	1
AT&T System 75 Telephone Equipment	1
Glenwood Springs Switch Upgrade	1
Brother MFC-8220 MFP (Serial #A6J292749)	1
EDP Equipment:	
Credit Card Swipe Terminals (DIA)	10
Credit Card Swipe Terminals (Eagle)	7
HP Laserjet 8150 Printer (Ser # SUSBD015200)	1
HP Laserjet 8150DN Printer (Ser #SUSBD021566)	1
HP Laserjet 4200N Printer (Ser#SCNBX309561)	1
HP Laserjet 4200N Printer (Ser#SCNBX216888)	1
HP Laserjet 3330 MFP (Ser #SSGL32C011H) (DIA)	1
HP Laserjet 4300N Printer (Ser #SCNGY405543)	1
HP Laserjet 4101 MFP (Ser #SUSRGY19510)	1
HP Laserjet 4300N Printer (Ser #SCNDY408155, SCNGY508679)	2
APC 4 Post Open Frame Rack Blk	2
Viewsonic P220FB 22" Monitor (Ser #434034500152)	1
Viewsonic P220FB 22" Monitor (Ser #434034300245)	1
HP Laserjet 4101 MFP (Ser#SUSLGY31997)	1

Transportation Management Systems, LLC**2.1 Tangible Personal Property**

Description	# Of Units
Viewsonic E-70 17" Monitors (Ser #26J042201262, 01257, 01256, 01263, 01268, 0125	8
Acer AL1912B 19" LCD (Ser #44300E2AED11, 44300E32ED11, 44300E7BED11)	3
APC Back UPS ES 350VA	40
HP Laserjet 4350N (Ser #SUSBXN10887, SUSBXN11834, SUSBXN11709)	3
HP Laserjet 5550DN Color Printer (Ser #SJPCD4D2099)	1
WYSE Winterm S30 32F/64R	1
WYSE Winterm 9150SE 256F/256R-TC	36
Acer AL1912B 19" LCD (Ser #ETL23020225030033AED31, ETL23020225030032BEC	4
APC Smart-UPS 1500 Tower 1500VA8 (Serial#SAS0506212750)	1
APC Back UPS ES 350VA	40
Acer AL1912 19" LCD (Ser #ETL230202250200E6CED)	1
IBM ThinkCentre A50 DT P4/3000 512MB-40GB Desktop (Ser #1S814924UKCHROLB	8
Acer AL1511B 15" LCD (Ser #ETL240B13551500159RH18)	1
WYSE Winterm 9150SE 256F/256R-TC	9
HP Proliant DL140 XEON-3 06G Server (Ser #M007MF6C4M)	1
Acer AL1511B 15" LCD (Ser #ETL240B13551502451RH18, 2275RH18, 2459RH18, 2	5
HP Proliant DL140 XEON-3 06G Server (Serial #M09CMF6C4P)	1
HP 36GB 15K Ultra320 Hard Drive (Serial #SG3520F10Z,SGD518F34E)	2
WYSE Winterm 9150SE 512F/256R W/K	1
Acer AL1714B 17" LCD (Ser #ETL1809102528013D2PQ, ETL1809102528013D9PQ)	2
IBM R51 1 6CEN 725 256/30 CMB 14 Laptop (Ser #1S2883ELUL3BC859)	1
Multi-Tech MultiVOIP 410 - VOIP Gateway	1
IBM R51 1 6CEN 725 256/30 CMB 14 Laptop (Serial #1S288ELUL3BD001,1S2883ELI	2
APC Smart-UPS 1000V (Serial # SAS0524112531, SAS0416125259)	2
Cisco 2811 AC Pwr 2FE 1NME-4HW (Serial #FTX0936A5AR)	1
Cisco 1-Port Serial Wan Interface C	2
Cisco 2-Port T1/E1 Multi Flex Voice	1
Cisco 10/100 BaseT Modular Router (Ser #FTX0935W0V1,FTX0935W0UM,FTX0935\	3
Cisco 1PT T1/FRAC T1-T1 DSU CSU WAN Plug in Module	2
IBM ThinkCentre A50 P4-3E/256MB/40G/24X/N Desktop (Ser #SLKKFC6Y, FC7D, FC	24
Acer AL1914B 19" LCD (Ser #ELT230221351801632ED4A)	1
Acer AL1714A 17" LCD (Ser #ELT1809232531000CCPQ44)	1
Acer AL1913W 19" LCD (Ser #ETL430900553500331PQ00)	1
IBM A50 P4-3E/256MB/40G/24X/N Desktop (Ser #1S809021ULKXC1R)	1
Acer AL2032WA 20" LCD (Ser #ETL380B06554000137RH)	1
HP Proliant DL360G4P X3 8-xM/2G (Ser #USM54503BM)	1
HP 36GB 15K Ultra320 Hard Drive (Ser #SGD542F3M7, SGD542F40X)	2
HP 36GB 15K Ultra320 Hard Drive (Ser #SGD542F3XE, SGD542F40L)	2
HP Proliant DL360R04P Rack Mount Server(Ser #USM54501VZ)	1
Acer AL2416WD 24" LCD (Ser #ETL610201854300191ED10)	1
Acer AL2021 20" LCD (Ser #ETL060700953800178RH12, ETL060700953800184RH1	4
IBM ThinkPad T43P NB PM/2 0 1GB-80GB Laptop (Ser #1S2687D5UL3AN672)	1
HP Laserjet 4345X MFP (Ser #SCNGYF14240)	1
WYSE Winterm 9150SE 512F/256R W/K	5
HP Laserjet 4350N Printer (Ser #SCNGXF38966, SCNGXF39418)	2
Adtran 1PT T1/FRAX T1-T1 DSU CSU WAN Plug-in Module	1
NEC 40" LCD 40 VIS NATI (Ser #S5Y104439YA, S5Y104593YA)	2
42" HD Plasma (Ser #S016503608E)	1
Acer AL2021 20" LCD (Ser #ETL060700954800321RH)	1
Acer AL1511B 15" LCD (Ser #ETL240B13554402149RHOA, 163RHOA, 427RHOA, 16	5
Acer AL1714A 17" LCD (Ser #ETL1809232531000D11PQ44, 18APQ44)	2
IBM ThinkPad T22 P3-900GHZ, 256/20/COMB Laptop (Ser #1S2647LU178R6MD2)	1

Transportation Management Systems, LLC

2.1 Tangible Personal Property

<u>Description</u>	<u># Of Units</u>
Cisco EtherSwitch - Switch - 16 ports (Ser #SFOC11091TBF, TGE, TGN, 110936CG)	4
Cisco Smartnet - Extended Service Agreement	4
Planar PL1700 17" LCD (Ser #BA730F57803, 57800, 57797, 57789, 57787, 57597, 57	25
Acer AL2416WBSD 24" LCD (Ser #102105733004884154)	1
Lenovo ThinkPad T60P Laptop NB C2D/2 0 2GB-100GB 15.4 DVDR F (Ser #1S8744J	1
WYSE Winterm V90 512MB FL/256MB RAM-W/Int WLS (Ser #S6J90G365939, 36594	5
Planar PL1711M 17" LCD (Ser #BC724F04106, 4094, 4093)	3
HP Laserjet M3027x MFP (Ser #SCNLLG21323)	1
Westinghouse LCD & Sanus Mount for Silverthorne Office CMETV	1
WYSE V90 XPE 512F/256R US-ROHS (Ser #S6GHDG700395, 700407, 700414, 7004	7
Western Digital 250GB Scorpio PATA 2 5IN 2400 Hard Drive	1
HP LP3065 30" LCD (Ser #CNN73690WDS)	1
Apple Mac Pro Dual-Core Xeon 5150 2.66 GHZ (Ser #G87302P2UQ2)	1
Kingston Value RM Memory - 1GB - DIMM 184-PIN - DDR	5
HP Hard Drive - 18 2GB - Ultra 320 SCSI	6
Planar PL1711M 17" LCD (Ser #BC729F04518)	1
Planar PL1900 19" LCD (Ser #PD0776JA16544, 16534, 16525, 16533)	7
Planar PL1910M 19" LCD (Ser #BD734F41633)	1
Planar PL2011M 20.1" LCD (Ser #AM716F03261)	1
Lenovo ThinkPad T61 Laptop 15 4" Display (Ser #SL3B9657)	1
All Components Memory 4Gb (2x2 GB) (FB-Dimm) DDR II	1
HP Proliant DL140 G3 Hot Plus SAS/SATA Server (Ser #	4
Cisco ASA5510 Appliance w/SW50 VPN (Ser #	1
HP 358254-B21 5642 Rack Cabinet	1
Quantum LTO 3 Half Height Tape Drive Single 1U RM	1
APC Smart UPS 1500VA RM 2U	1
HP Proliant DL380 G5 Rack Server	1
HP Proliant DL320S Server	1
APC Smart-UPS 1500 RM 2U	1
Belkin 16 Port OmniView SMB Cat5 KVM Switch // Server Interface Modules	2
HP Laserjet M4345x MFP (Serial #SCNDC7D4250)	1
HP Color Laserjet 3600N (Serial #SCNWBD41273)	1
My Book Pro Edition II Hard Drive (Ser #WU2T11125228)	1
MacBook Pro 17" Laptop	1
MacBook 13" Laptop	1
Mac Mini 2 0Ghz SuperDrive	1
HP Laserjet 4101 Printer/Copier (Ser #SUSRGY19466)	1

Radio Equipment:

TK-280 Portables (15) / TK-780 Mobiles (140) / TK-780HK Base Stations (10)	N/A
JPS Base Station Modems	2
TK-780 VHF Kenwood Radios	4
TK-780 VHF Kenwood Radios	4
TK-780 VHF Kenwood Radios	25
TK-780 VHF Kenwood Radios	2
TK-780 VHF Kenwood Radios	2
TK-780 VHF Kenwood Radios	10
TK-780 VHF Kenwood Radios	10
TK-780 VHF Kenwood Radios	10
TK-780 VHF Kenwood Radios	6
TK-780 VHF Kenwood Radios	4

Transportation Management Systems, LLC**2.1 Tangible Personal Property**

Description	# Of Units
TK-780 VHF Kenwood Radios	12
TK-780 VHF Kenwood Radios	7
TK-780 VHF Kenwood Radios	10
Sprint/Nextel Cell Phones (free not on fixed asset schedule)	250
Computer Software:	
AT&T NANP Upgrade	1
Great Plains Dynamics	1
Intrix Systems Supercharge CC Software	1
Intrix Systems Supercharge CC Software	N/A
Great Plains Dynamics SQL Server Version Upgrade	1
Goldmine	1
Adobe Illustrator/Photoshop	2
OEM Winserver 2003 (Web & Database)	2
ISA Server Standard Edition 2004 License and disc	1
MS Windows Server Standard 2003 Licenses and disc	1
MS Office Pro 2003 Licenses and disc	1
Symantec Antivirus Multi Corp	110
Barracuda Spam Firewall 300	1
MS Windows Server Standard 2003 License	1
MS Windows Terminal Server 2003 License (MOLP)	30
Symantec Backup Exec 10d Windows Server License	8
Adobe Creative Suites Premium	1
Symantec Backup Exec 10d Windows Server CPS v 10 1 License (s/b software)	1
MS Windows Server 2003 R2 Standard Edition License (MOLP)	5
MS SQL Server 2005 Standard Edition License (MOLP)	2
MS SQL Server 2005 License (MOLP)	75
Adobe Creative Suites Premium CS 2-Windows Upgrade	1
MS Windows Server 2003 Terminal Server License (MOLP)	45
MS Windows Server 2003 R2 Standard Edition License (MOLP)	5
Adobe Creative Suite 3 Design Premium	1
WYSE Device Manager V4.5 Enterprise Upgrade License	85
Cisco Smartnet 8X5XNBD ASA5520 W/300 VPN Firewall Extended Service Agreemer	1
Versign SSL Secure Site Pro	1
KMS - HR Software	1
Borland Delphi CodeGear RAD Studio 2007 Architect/Delphi for PHP 2007	2
MS Office Professional/Visio 2007 License & Media	4
IC Verify	1
Adobe Acrobat Standard (v 8.0)	1
MS Office Project Standard 2007 License	1
MS SharePoint Portal Server(51)/Server/Designer(1)/InfoPath(1)/Visual Studio(1) - Lic	N/A
MS Office Professional 2007 (Ser #723)	1
Crystal Reports XI Developer Edition/Crystal Reports 2008	2
Delphi Component Technology	1
Adobe Creative Suite 3 Web and Master Collection	2
Symantec Backup Exec for Windows Server License	2
Computer Associates XOssoft WAN Sync File Server Standard OS (v 4 0) License (OL	2
Building:	
GWS - Plumbing/Ross House	1
GWS - Tap Fee/Ross Hoss	1

Transportation Management Systems, LLC

2.1 Tangible Personal Property

<u>Description</u>	<u># Of Units</u>
LCD TV Monitor support hardware/DIA	1
Adtran TSU100 MOD T1/FT1 CSU/DSU V 3	2
IBM ThinkPad T43P 2668 15" Display Laptop (Ser #SL3VDTAN)	1
Cisco 2811 Integrated Services Router (Ser #SFTX1008C19E) //2-Port T1/E1 Cisco M	5
AMD Athlon 64x2 4400 2GHz Processor // AMD Athlon 64 FX Processor	2
HP ML570R03 Server / HP ProLiant DL360 Server / HP Single Port Ultra320 Hard Drive	2
HP ProLiant DL380 G4 Xeon Server / HP Universal Ultra320 SCSI Hard Drive (9)	3
Planar PL1700 17" LCD (Serial #AG616H15239, AG616H15227)	2
Belkin Omnicview Enterprise Cat 5 KVM 16 Port Switch	2
Belkin Omnicview Enterprise Quad-Bus Series Remote IP Console	1
HP Procurve 44 Port Switch 2848 (Serial #SG602SK07R)	1
WYSE Winterm 9150SE 512F/256R (Serial #S64H0F670192, S64H0F670305, S64H0	3
APC Smart-UPS 1500VA RM 2U 120(Serial #SAS0619233318,SA0619233474)	2
APC Smart-UPS 1500VA RM 2U 120(Serial #SAS0603130631,SAS0603130612)	2
Acer AL1500 15" LCD (Ser #A2Z628001150)	1
HP Storageworks DAT 40 SCSI Tape Drive (Serial #HU10616CMF)	1
AMD Turion 64 Mobile ML44 2 4GHZ 800MHZ FSB 1MB L2 Cache	1
Planar PL1700 17" LCD (Ser #AG635H49660, 49661, 49647, 49648, 49649, 49650, 49	14
Planar PL1900 19" LCD (Ser #51069JA003538)	1
HP 18 2GB Ultra320 Hard Drive	7
HP Laserjet Printer 3390 (Serial # SCNLJP48004)	1
APC Smart-UPS 1500VA 230V INTE (Serial # AS0639330180)	1
Planar PL1700 17" LCD (Serial #AG637H56239, AG637H56221)	2
HP Laserjet Printer 4350N (Ser#SCNGXL04691)	1
HP ProLiant DL380 G5 Server (Ser#2UX708014Z)	1
HP ProLiant DL360 G5 Performance Servers (Ser #SUSM64909KZ, SUSM64909KY, SUSI	4
Planar PL1700 17" LCD (Ser #AG705G85406, 85405, 85402, 85404, 85411, 85422, 85	10
HP Single Port Hard Drive 146GB SAS 2 5 (Ser #2SD706VM89, VMMH, VM7G)	3
HP Single Port Hard Drive 72GB SAS 2 5 (Ser #	3
Planar PL1900 19" LCD (Ser #5106CJA017905, 5106CJA017712, 5106CJA017190))	3
HP ProCurve Switch 5412ZL-96G 96PT-1000TX (Ser #	2
MacBook Pro 17" Laptop (Ser #W27867365)	1
WYSE Winterm V90 Thin Client	30
HP Laserjet Printer P2015DN (Serial #SCNBJN39807, #SCNBJN39806)	2
Cisco ASA 5520 Firewall Edition Security Appliance (Serial #SJM1115LOWB)	1
HP ProLiant DL360 G5 Performance (Ser #SUSM71000S5, SUSM71000U6) / HP Singl	2
Quantum Superloader 3 Tape Autoloader LTO-3 8 Slot LVD	1
HP Single Port Hard Drive 146GB SAS 2.5 (Ser #2SD717VHXD, VHXF, VHXL, VHXH	6
HP ProLiant DL360 G5 Performance (Ser #SUSM71902MC)/HP Memory 2GB FBD PC	2
Planar PL1900 19" LCD (Serial #PD0775JA05821 PD0775JA05799)	2
Quantum Superloader 3 Tape Autoloader LTO-3 8 Slot LVD	1
HP Universal Hard Drive 36.4GB Ultra320 (Serial # PHH640F0GZ,PHH635F1M5,PHH	3
HP Laserjet Printer P2015DN (Serial #SCNBJL51966,SCNBJL51956,SCNBJL51971,S	4
WYSE V90 512MB FL/256MB RAM-W/Integrated WLS	1
WYSE V90 Dual-Video Eden (Serial #S6KXDG600539,S6KXDG600551)	2
Planar PL1700 17" LCD (Ser #BA722F23369, 23370, 23371, 23380, 23381, 17095, 23	12
WYSE Winterm V90 1 GHZ	15
APC Smart-UPS RM 1500VA USB & Serial - UPS 980 watt - 1440 VA (Ser #SAS0721	2
Planar PL1711M 17" LCD (Ser #BC723F02592, 2593, 2594, 2595, 2596)	5
WYSE V90 Dual-Video Eden (Ser #S6KXDG600392, 600422, 600491, 600594, 60059	5
Cisco - DSU/CSU Plug-in module - 1.5 Mbps - T-1 (Ser #SFOC11285UNR, WDP, WH	4
Cisco 2811 Integrated Services Router (Ser # SFTX1133A114, A10C, A110, A11F)	4

Transportation Management Systems, LLC

2.1 Tangible Personal Property

<u>Description</u>	<u># Of Units</u>
GWS - Ross House (23 Ponderosa Circle)	1
GWS - Fedex Facility	1
Silverthorne - 224 Annie Road (Commercial) (51%)	1
Silverthorne - 224 Annie Road (Residential) (49%)	1
GWS - Flooring/Tile/Carpet - Ross House	1
GWS - remodel/furnace upgrade - Ross House	1
GWS - Ross House/sewer line	1
GWS - Ross House /work	1
GWS - washer/dryer Ross House	1
Fleet Accessories:	
Drive Cam	245
Sage Quest GPS Units	254

Schedule 2.2(c)

Deposits from CME

Rocky Mt Car - short term rental lease deposit
Eagle-Vail parking lot improvements

Praetorian Non-Working Premium Deposit 8/07-7/08
Fuel Options
Riverfront Deposit
Lake View Condo Deposit (Jim Rapp)
Vail Daily Lot Deposit
Exel Energy deposit

10,000 00 Deposit will be received in June
15,000.00 Security for lot improvements held by County,
will receive refund this summer
103,170 00 Auto insurance primary deposit
36,295 90 Security for fuel option trading, received in May
76,950.00 Westin Unit
1,500 00 Jim Rapp's apartment, will transfer to employees
50,000 00 Earnest money deposit for purchase
1,112 00 Deposit for utility service

Prepaid Expenses

Insurance - Any prepaid insurance will be kept by Sellers
Work Comp - Any prepaid insurance will be kept by Sellers

Schedule 2.2(m)

Excluded Assets

For the avoidance of doubt, the shop items, tools, parts, lifts, shop trucks, trailers, skid loader, or any other shop-related assets which are located at Sellers' Silverthorne, Glenwood Springs, or Edwards Station service facilities, as such assets are owned by Action Automotive.

Schedule 2.7(a)

Assumed Liabilities

None.

Schedule 5.9(c)

Bonus Plans

See Attached.

Seasonal Bonuses 08-09

Guest Service Driver

Winter Season

Safety Bonus

Guest Service Drivers may receive an additional 10% of their run/transfer wages if they do not have any "at fault" accidents, safety related issues, or damage or lose any sports equipment from a vehicle rack and if they work through the earlier of their commitment date (4/5/09) or the expiration date of their VISA. The accident review committee will determine "at fault". The members of the committee include an Operations Manager, the Director of Safety and three Guest Service Drivers. All decisions of the committee are final. The date range that will be used to calculate applicable wages will be 11/10/08 through 4/12/09. If applicable, the bonus will be paid on the pay date of 4/17/09.

Winter Premium Bonus

Guest Service Drivers may receive an additional 5% of their run/transfer pay for the season if they work through the earlier of their commitment date (4/5/09) or the expiration date of their VISA. The date range that will be used to calculate the bonus will be 11/10/08 through 4/12/09. If applicable, the bonus will be paid on the pay date of 4/17/09.

Additional Safety and Winter Premium Bonus Calculations

If a Guest Service Driver leaves before the earlier of their commitment date (4/5/09) or their VISA expiration date, both the Safety and Winter Premium Bonuses will be adjusted as follows:

- 1-7 days early, receive up to 75% of any Safety and Winter Premium Bonus.
- 8-14 days early, receive up to 50% of any Safety and Winter Premium Bonus.
- Earlier than 15 days, receive up to 0% of any Safety and Winter Premium Bonus.

Returning Bonus

In addition to the Safety and Winter Premium Bonuses, a returning Guest Service Driver that is actively working full time seasonal (30+ hours per week) or actively working part time (less than 30 hours per week) through 2/1/09 is eligible for a returning bonus. Guest Service Drivers who are full time seasonal will be paid \$500 and part time \$250. Any Guest Service Driver that has not been an employee of CME in the previous three years will not be eligible for the returning bonus. A returning bonus will not be paid until the Guest Service Driver attends the returning Guest Service Driver meeting or views a video of that meeting. **Returning Guest Service Drivers working in multiple departments can only receive one returning bonus.** If applicable, the bonus will be paid on the pay date of 2/6/09.

Off Season

Safety Bonus

Guest Service Drivers may receive an additional 5% of their run/transfer wages if they do not have any "at fault" accidents, safety related issues, or damage or lose any sports equipment from the vehicle racks and if they work through the earlier of their commitment date (11/9/08) or the expiration date of their VISA. The accident review committee will determine "at fault". The members of the committee include an Operations Manager, the Director of Safety, and three Guest Service Drivers. All decisions of the committee are final. The date range that will be used to calculate the bonus will be 6/23/08 through 11/09/08. If applicable, the bonus will be paid on the pay date of 11/14/08 unless VISA expiration date is earlier in which case the pay date will be 9/5/08.

Seasonal Bonuses 08-09

Dispatch

End of Season Bonus

Dispatchers may receive an end of the season bonus if they work through the earlier of their commitment date (4/5/09) or the expiration date of their VISA. If they work less than 650 hours in dispatch they will be paid 7% of their total hourly dispatch wages. If they work more than 650 hours in dispatch they will be paid 10% of their total hourly dispatch wages. The date range that will be used to calculate pay and hours will be 10/27/08 through 4/12/09. If applicable, the bonus will be paid on the pay date of 4/17/09.

Returning Bonus

In addition to the end of season bonus, any returning Dispatcher that is actively working full time seasonal (30+ hours or 4+ shifts per week) through 2/1/09 will receive a \$500 returning bonus.

Returning Dispatchers working in multiple departments can only receive one returning bonus. If applicable, the bonus will be paid on the pay date of 2/6/09.

Inside Sales Agents and Eagle Airport Counter Agents

End of Season Bonus

Inside Sales Agents and Eagle Airport Counter Agents may receive an end of the season bonus of 12% of their total hourly Inside Sales Agent and/or Eagle Airport Counter Agent wages if they work through the earlier of their commitment date (4/5/09) or the expiration date of their VISA and work at least 640 hours. The date range that will be used to calculate pay and hours will be 11/10/08 through 4/12/09. If applicable, the bonus will be paid on the pay date of 4/17/09.

Returning Bonus

In addition to the end of season bonus, any returning Inside Sales Agent and/or Eagle Airport Counter Agent that is actively working full time seasonal (30+ hours per week) through 2/1/09 will receive a \$500 returning bonus. In addition to the end of season bonus, any returning Inside Sales Agent and/or Eagle Airport Counter Agent that is actively working part time (less than 30 hours per week) will receive a \$250 returning bonus. **Returning Inside Sales Agents or Eagle Airport Counter Agents working in multiple departments can only receive one returning bonus.** If applicable, the bonus will be paid on the pay date of 2/6/09.

Disclaimer

All seasonal 08 09 bonuses will not be earned until the bonus is paid, which will be no later than five days after the expiration of any bonus period date range. The interpretation and administration of the bonus program shall be left to the complete discretion of the Company.